

Applicant Details

First Name	Danielle		
Last Name	Wilburn Allen		
Citizenship Status	U. S. Citizen		
Email Address	dbwilburn0801@email.campbell.edu		
Address	<table> <tr> <th>Address</th> </tr> <tr> <td> Street 1104 Silvershire Way City Knightdale State/Territory North Carolina Zip 27545 Country United States </td> </tr> </table>	Address	Street 1104 Silvershire Way City Knightdale State/Territory North Carolina Zip 27545 Country United States
Address			
Street 1104 Silvershire Way City Knightdale State/Territory North Carolina Zip 27545 Country United States			
Contact Phone Number	9196000735		

Applicant Education

BA/BS From	North Carolina State University
Date of BA/BS	May 2013
JD/LLB From	Campbell University School of Law http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=53401&yr=2011
Date of JD/LLB	May 10, 2021
Class Rank	10%
Law Review/Journal	Yes
Journal(s)	Campbell Law Review
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Specialized Work **Appellate, Bankruptcy, Habeas**
Experience

Recommenders

Bernier, James
JBernier@ncdoj.gov
(919) 355-2076
Tripp, Michael
mtripp@campbell.edu
(919) 865-4476

References

Matthew W. Sawchak
Professor of Civil Procedure
Campbell Law Review Faculty Advisor
Campbell University School of Law
(919) 865-4675
sawchak@gmail.com
Professor Sawchak taught my Civil Procedure II course where I earned a grade of 97. Professor Sawchak also oversaw my Law Review Comment drafting process and graded the final submission for my Rigorous Writing Experience credit.

Michael Tripp
Professor of Legal Research and Writing
Campbell University School of Law
(919) 865-4476
mtripp@campbell.edu
Professor Tripp taught my Legal Research and Writing I course where I earned the highest grade and the Book Award with a 94.

James Bernier, Jr.

Special Deputy Attorney General
Property Control Section
North Carolina Department of Justice
(919) 716-6080
jbernier@ncdoj.gov

Mr. Bernier was one of my supervising attorneys at the N.C.
Department of Justice when I was a paralegal there in the
Environmental Division and Special Litigation Division.

Robert E. Fields, III
Partner
Oak City Law, LLP
(919) 274-3100
rob.fields@oakcitylaw.com

Mr. Fields is a founding partner at Oak City Law where I worked as a
paralegal for several years.

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Danielle Wilburn Allen

1104 Silvershire Way
Knightdale, North Carolina 27545

dbwilburn0801@email.campbell.edu
(919) 600-0735 (cell)

August 21, 2020

The Honorable Elizabeth W. Hanes, Magistrate Judge
United States District Court for the Eastern District of Virginia
701 East Broad Street
Richmond, Virginia 23219

RE: Term Law Clerk for the 2021–2022 Term

Dear Judge Hanes:

I write to express my interest in a term clerkship available in your chambers after I graduate from Campbell University School of Law in May 2021. I am extremely interested in joining your staff because I am an experienced legal researcher and writer with a strong interest in clerking for the federal judicial system after I graduate, and I believe I will bring value to your chambers.

I gained extensive experience with complex civil litigation in both private practice and public service during my five years' experience as a paralegal. My paralegal work inspired me to pursue a career as an attorney. In addition to my legal experience, I have a proven track record of excelling in research and writing courses as well as doctrinal courses in law school. I received the highest score and *Book Award* in both Legal Research and Writing I and II. In addition, I have attained top-notch grades in other courses and maintained a top 10% GPA. I am the teaching assistant for Property and Contracts, given my proficiency in those courses, which entails providing additional instruction to first-year students on those subjects. I have also been selected to serve as an upper-level teaching assistant for Secured Transactions. My academic successes have also allowed me to serve on *Campbell Law Review*. I am the incoming editorial board member charged with ensuring strict compliance with the *Bluebook*. Furthermore, I have expanded on my legal knowledge, research skills, writing skills, and interests during law school by pursuing externships in all three levels of government. I have successfully tackled extensive legal research and writing projects with the U.S. Bankruptcy Court for the Eastern District of N.C., the N.C. Department of Justice's Criminal Division, and a local town. I researched and authored a published Order and Opinion for Chief Judge Humrickhouse at the Bankruptcy Court this spring that I have included for your review. I believe my experience, skills, and knowledge will be very valuable as a law clerk in your chambers.

Additionally, I have enclosed herewith my resume and transcripts. Professor Michael Tripp and N.C. Special Deputy Attorney General James Bernier have supplied letters of recommendation. Additionally, Professor Matthew Sawchak and attorney Robert Fields will speak with you further regarding my qualifications. I sincerely appreciate your time and consideration of my application materials, and I look forward to the opportunity to serve as a law clerk after law school concludes.

Kind regards,

/s/ Danielle Wilburn Allen
Danielle Wilburn Allen

Enclosures

Danielle Wilburn Allen

1104 Silvershire Way
Knightdale, North Carolina 27545

dbwilburn0801@email.campbell.edu
(919) 600-0735 (cell)

EDUCATION

Campbell University, Norman Adrian Wiggins School of Law May 2021
Juris Doctor Candidate (13/166, Top 10%)
Book Awards: Legal Research and Writing I; Legal Research and Writing II; and Pretrial Litigation
Meredith College, Paralegal Program May 2014
Paralegal Certificate (4.0 GPA)
North Carolina State University May 2013
Bachelor of Arts in Political Science, Minor in Spanish (3.75 GPA, *summa cum laude*)

INVOLVEMENT: *Campbell Law Review* (19–20), Chief Bluebook Editor (20–21); Contract Law Scholar (19–21); Property Law Scholar (20–21); Lexis Representative (19); Shepherd’s Table Soup Kitchen (16–18); Homeowner Association Board Member (15–18); Meredith Paralegal Program Mentor (15–18); Walk to Defeat ALS (10–18)

EXPERIENCE

Town of Cary, North Carolina—Extern May–July 2020

- Worked with three highly skilled and knowledgeable Town attorneys on local government legal issues
- Researched and drafted three memorandums regarding the Town’s authority to control and alter streets
- Reviewed several Town contracts for potential changes to performance in light of the COVID-19 pandemic
- Attended meetings with various staff and assisted in providing guidance to other Town officials and departments

United States Bankruptcy Court, E.D.N.C., Judge Stephani W. Humrickhouse—Extern Jan.–Apr. 2020

- Prepared the Judge for court by drafting bench memos summarizing party disputes and legal issues
- Attended court sessions with the Judge, and worked closely with the Judge’s permanent and term law clerks
- Drafted published Order and Opinion on whether claim denial is proper prior to adjudication on the merits of the adversary proceeding against a creditor-defendant, and whether a jury trial is proper when the adversary proceeding creditor-defendant made a claim in the bankruptcy or when no claim was made but the creditor-defendant filed a compulsory counterclaim

North Carolina Department of Justice—Extern May–Aug. 2019

- Summer extern in the Criminal Division, Capital Litigation and Federal Habeas Corpus Section
- Researched, compiled, and summarized upwards of 30 cases regarding whether a trial court judge may properly summarily deny a Motion for Appropriate Relief without first granting an evidentiary hearing
- Researched whether it is a *Brady* violation to inadvertently fail to produce a complete criminal record of a witness, when the record was requested by defense and provided by State, but it was readily available to defendant also
- Drafted a Brief in Opposition to Petition for Writ of Certiorari to the N.C. Supreme Court, and an Answer to and Motion for Summary Denial of a Fourth Amended Motion for Appropriate Relief to a trial court

North Carolina Department of Justice—Paralegal II Jan. 2016–July 2018

- Sole paralegal assigned to the Education Section Special Deputy Attorney General defending tort claims against the University of N.C. System and its sixteen constituent universities in the N.C. Industrial Commission
 - Responsibilities included: coordinating with I.C.; effectively managing upwards of 30 active tort claims at any given time; drafting various litigation documents; and working effectively with other office staff
- Assisted with various special projects involving campaign and election law in the Special Litigation Division
- Partnered with Paralegal III to handle tobacco litigation and the ongoing Master Settlement Agreement drafting
- Previously collected on unpaid civil penalty assessments for the N.C. Department of Environmental Quality in the Environmental Division by filing civil superior court actions all across the state to collect delinquencies
 - Responsibilities included: coordinating with N.C. Office of Administrative Hearings; effectively managing upwards of 50 active collections matters at any given time; and drafting various litigation documents

Oak City Law, LLP—Paralegal and Director of Client Services Feb. 2013–Jan. 2016

- Sole paralegal in a boutique civil litigation firm that focuses on complex business disputes, class action litigation, and post-judgment proceedings, and which also performs a variety of business-related transactional work
- Maintained two hectic attorney dockets and generally managed the firm’s day-to-day operations
- Drafted correspondence, pleadings, motions, discovery, affidavits, proposed orders, settlement documents, etc.
- Attended and contributed to internal firm meetings, client meetings, depositions, mediations, hearings, and trials

PAST CERTIFICATIONS: N.C. State Bar Certified Paralegal (“N.C.C.P.”) (15–18); Notary Public (13–18)

Danielle Wilburn Allen
Campbell University School of Law
Cumulative GPA: 91.615

Fall 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Property I	James McLaughlin	96	2	
Torts I	Johnny Chriscoe	84	3	
Civil Procedure I	Christopher Ogolla	89	2	
Contracts I	Timothy Zinnecker	87	3	
Legal Research and Writing I	Michael Tripp	94	2	I earned the Book Award for this course.
Criminal Law	Bobbi Boyd	98	3	
I received the Academic Honors List designation for this semester.				

Spring 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Torts II	Johnny Chriscoe	93	2	
Property II	James McLaughlin	93	3	
Contracts II	Timothy Zinnecker	91	2	
Civil Procedure II	Matthew Sawchak	97	2	
Constitutional Law I	Gregory Wallace	87	3	
Legal Research and Writing II	Tom Patrick	94	3	I earned the Book Award for this course.
I received the Academic Honors List designation for this semester.				

Fall 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Wills and Trusts	Richard Bowser	93	3	
Campbell Law Review	Matthew Sawchak	S	1	
Rigorous Writing Experience	Matthew Sawchak	S	0	Professor Sawchak oversaw my Law Review Comment drafting process which was used for my RWE experience.
Mediation Advocacy	Jacqueline Clare	S	2	
Summer Externship I	Kala Taylor	S	2	
Constitutional Law II	Sarah Ludington	87	3	
Evidence	Daniel Tilly	93	3	
Old Kivett Appellate Brief Writing Workshop	Matthew Sawchak	S	1	
Criminal Procedure	Anthony Ghiotto	83	3	

Spring 2020

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
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Pretrial Litigation	Rick Glazier	98	3	I earned the Book Award for this course.
Externship II	Kala Taylor	S	2	
Advanced Legal Writing	Robert Montgomery	91	3	
Campbell Law Review	Matthew Sawchak	S	1	
Trial Advocacy	Daniel Tilly	95	4	
Business Organizations	Kevin Lee	S	3	

Grading System Description

A grade listed as "S" designates a passing score in a non-numerically graded course.

Danielle Wilburn Allen
Meredith College Paralegal Program
Cumulative GPA: 4.0

Fall 2013

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Professional Development		P		
Legal Research and Writing		A		
Legal Survey		A		
Law Office Management and Professional Responsibility		A		

Spring 2014

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Civil Litigation Specialty		A		

Grading System Description

A grade listed as "P" is passing.

August 21, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am proud to serve as a reference for Danielle Wilburn Allen, my former co-worker and paralegal. She has a sharp legal mind, a wonderful demeanor and an inner drive that is rarely seen today. I am confident that she will be an amazing law clerk.

I have had the pleasure of working with Danielle for nearly two years. She has made quite an impression in that time. I was a member of her interview panel with the North Carolina Department of Justice in December 2015. She was subsequently hired as my paralegal for the collections program servicing the Department of Environmental Quality. Danielle and I were eventually transferred to another division within the DOJ when the agency contract for the collections program was not renewed.

To say that Danielle is a hard worker is an understatement. She provides high-quality work and genuinely cares about the tasks she is performing. She also takes initiative to improve the work processes and to make sure that all tasks are being covered. For example, in her short time in the collections program, she identified areas where we could improve both the filing and workflow systems for easier tracking of the files. This allowed us to move for default judgments more quickly when available and easily identify debtors that were falling behind on promised payments.

Danielle has a "go get them" attitude that is necessary for the legal field. She pays attention to details and follows up as needed on filings, service, etc. without prompting from me. She follows up with the client and others regularly and as needed. Furthermore, she asks questions so that she can understand the status of a matter and the processes that need to follow. It has always been clear to me that she endeavors to understand the reason behind any action to ensure the client is served well.

Danielle has an honest, sincere, and cheery attitude and work ethic. She is willing to take on new tasks and revels in the opportunity to learn and excel. I also frequently asked for her thoughts and input because I valued them. She is also dependable and trustworthy. She will show up when she said she would, if not sooner, and will make sure that a quality job is done, even if it involves working late or on the weekends.

I would rehire Danielle as an associate attorney without hesitation if given the chance. I have no doubt that she will be an excellent law clerk. Danielle has my highest recommendation.

Sincerely yours,

James Bernier, Jr., Esq.

919-355-2076

James Bernier - JBernier@ncdoj.gov - (919) 355-2076



June 23, 2020

Re: *Danielle Wilburn Allen, Clerkship Applicant*

Dear Judge:

I have had the great pleasure of having Danielle Wilburn Allen as a student in Legal Research and Writing during the 2018 fall semester, and I enthusiastically recommend her for a judicial clerkship in your chambers.

As a student in Legal Research and Writing, Danielle demonstrated an exceptional aptitude for the law and legal writing. Danielle always began assignments as soon as they were given, and she was diligent in asking questions and seeking feedback as he worked through those assignments. Legal Research and Writing is often a difficult class for first-year students, but Danielle excelled in my class, achieving the highest grade in her section. The fact that Danielle is ranked in the top ten percent in a class and has achieved equally high grades in her other Legal Research and Writing classes is consistent with my judgment of Danielle's exceptional abilities.

Danielle is not only a bright and conscientious student, she has a most pleasant personality—she is mature and even-tempered. Some of the assignments in Legal Research and Writing are group assignments, and Danielle worked well with others—often as the leader of the group.

Letter of Recommendation: Danielle Wilburn Allen

Page 2 of 2

In addition to her years of experience as a paralegal, Danielle has furthered her understanding of the legal profession through various practical experiences. She has interned at both the North Carolina Department of Justice and with Bankruptcy Court Judge Stephani Humrickhouse.

In short, Danielle is an exceptional student, and she promises to be an excellent member of the legal profession. I recommend as strongly as I can her selection as a judicial clerk in your chambers.

Sincerely,



Michael R. Tripp
Professor, Legal Research & Writing



SO ORDERED.

SIGNED this 11 day of March, 2020.

Stephani W. Humrickhouse

Stephani W. Humrickhouse
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
WILMINGTON DIVISION

IN RE:

SOUTHERN PRODUCE
DISTRIBUTORS, INC.,

DEBTOR

CASE NO.

18-002010-5-SWH

CHAPTER 11

SOUTHERN PRODUCE
DISTRIBUTORS, INC.,

Plaintiff,

v.

BLAKE GARY ADAMS, WILLIAM GARY
ADAMS, KEITH SMITH, STRICKLAND
FARMING PARTNERSHIP, D&T FARMS,
INC., and WARREN FARMING
PARTNERSHIP,

Defendants.

ADVERSARY PROCEEDING
NOS. 19-00064-5-SWH,
19-00066-5-SWH,
19-00067-5-SWH,
19-00068-5-SWH,
19-00065-5-SWH, and
19-00069-5-SWH

ORDER AND OPINION ON 502(d) ISSUE AND JURY TRIAL DEMAND

The matters before the court are: (1) debtor Southern Produce Distributors Inc.'s objections to claims of Blake Gary Adams (Scheduled Claim No. 3.17), William Gary Adams (Scheduled Claim No. 3.136), Keith Smith (Scheduled Claim No. 3.74), Strickland Farming Partnership (Claim No. 55), D & T Farms, Inc. (Claim No. 45), and Warren Farming Partnership (Claim No. 43), pursuant to 11 U.S.C. § 502(d); and (2) Defendants' demands for jury trials in adversary proceedings Southern Produce Distributors, Inc. v. Blake Gary Adams (19-00064-5-SWH), Southern Produce Distributors, Inc. v. William Gary Adams (19-00066-5-SWH), Southern Produce Distributors, Inc. v. Keith Smith (19-00067-5-SWH), Southern Produce Distributors, Inc. v. Strickland Farming Partnership (19-00068-5-SWH), Southern Produce Distributors, Inc. v. D & T Farms, Inc. (19-00065-5-SWH), and Southern Produce Distributors, Inc. v. Warren Farming Partnership (19-00069-5-SWH).

A hearing was held in Wilmington, North Carolina, on December 18, 2019, and the court took these matters under advisement. At the conclusion of the hearing, the court entered an Order Regarding Briefing of § 502(d) and Right to Jury Trial Issues. On December 31, 2019, Defendants Blake Adams, William Adams, Keith Smith, D&T Farms, Inc., Strickland Farming Partnership, and Warren Farming Partnership jointly filed their Memorandum of Law Regarding Section 502(d). On December 31, 2019, the debtor also filed its Memorandum of Law Regarding Section 502(d). On January 15, 2020, the adversary proceeding Defendants Blake Adams, William Adams, Keith Smith, Strickland Farming Partnership, D&T Farms, Inc., and Warren Farming Partnership, each separately filed a Memorandum of Law in Support of its Demand for Jury Trial. On January 15, 2020, debtor filed its Brief Regarding Jury Trial Issue. After a review of the case record and consideration of the parties' arguments, the debtor's objections to claims under § 502(d)

shall be held in abeyance pending final adjudication of the adversary proceedings, and the Defendants' demands for jury trials on the adversary proceedings are hereby stricken.

BACKGROUND

Southern Produce Distributors, Inc. (the "debtor") is a sweet potato grower, packer, and shipper based in Faison, North Carolina. As part of its business operation, the debtor regularly purchased sweet potatoes from local growers, packed the purchased potatoes, and sold and shipped them to wholesale and retail vendors. Pre-petition, Blake Gary Adams, William Gary Adams, Keith Smith, Strickland Farming Partnership, D&T Farms, Inc., and Warren Farming Partnership (hereinafter collectively known as the "Growers") sold sweet potatoes to the debtor, which were utilized to fulfill contracts that the debtor had with buyers of sweet potatoes. The debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on April 20, 2018 (the "Petition Date").

Three out of six of the Growers filed Proofs of Claims in this bankruptcy case: Strickland Farming Partnership, D&T Farms, Inc., and Warren Farming Partnership (hereinafter the "Proof of Claim Growers"). On June 12, 2018, Warren Farming Partnership filed Proof of Claim No. 43 wherein it asserted an unsecured claim against the debtor in the amount of \$437,404.84. On June 20, 2018, D&T Farms, Inc., filed Proof of Claim No. 45 wherein it asserted an unsecured claim against the debtor in the amount of \$602,528.13. On July 27, 2018, Strickland Farming Partnership filed Proof of Claim No. 55 wherein it asserted an unsecured claim against the debtor in the amount of \$168,000.00.

The other three involved Growers, Blake Adams, William Adams, and Keith Smith, (hereinafter the "Scheduled Claim Growers") did not file Proofs of Claims against the debtor. The debtor's Schedules list Blake Adams as having a pre-petition claim in the amount of \$33,226.48,

William Adams as having a pre-petition claim in the amount of \$78,656.40, and Keith Smith as having a pre-petition claim in the amount of \$256,707.40.

On August 20, 2018, the debtor filed an Emergency Motion for Authority to Make Interim Payments on Critical Pre-Petition Grower Claims. That motion was met with opposition and was ultimately restructured to be a request to make certain pre-payments to the Growers for new post-petition sweet potato contracts. On September 7, 2018, the court entered an Order Authorizing Debtor, In Its Discretion, to Enter into Certain Post-Petition Grower Transactions (hereinafter the “Order”). In September of 2018, the debtor entered into contracts with all six Growers, pursuant to the Order, who agreed to sell to the debtor new crops of sweet potatoes, in exchange for debtor’s pre-payment to the Growers, with the remaining balance due within some period of time after the delivery of the potatoes.

On May 1, 2019, the debtor initiated six adversary proceedings against the Growers. In those Complaints, the debtor alleged that the Growers breached the post-petition contracts by failing to deliver some or all of the agreed upon new sweet potatoes, or in some cases requiring additional payments above that required by the Order to obtain the contractually agreed upon amount of new sweet potatoes. The debtor further alleges that the Growers wrongfully applied the pre-payments received for the post-petition contracts to the debtor’s pre-petition debts, and that these actions violated not only the various contracts and the Order, but also the automatic stay. The original Complaints asserted the following claims for relief: Breach of Contract; Unjust Enrichment; Violation of the Automatic Stay; and Motion for Civil Contempt of Court.

In their respective Answers, the Growers admitted the existence of the contracts but denied any breach or liability to the debtor. Four of the Growers asserted Counterclaims in their Answers: Blake Adams, William Adams, Keith Smith, and Warren Farming Partnership (hereinafter the

“Counterclaim Growers”). The Counterclaim Growers alleged that debtor breached the contracts by refusing to take delivery of the amount of sweet potatoes specified under the contracts and refusing to pay for all or some of the sweet potatoes that the debtor did accept. All Growers requested a jury trial on all issues so triable.

The court set a hearing on October 1, 2019, for consideration of the issues related to the jury trial demands. At the October 1, 2019, hearing this court heard arguments from the parties on the right to a jury trial, and afforded the debtor an opportunity to amend its original Complaints. On November 12, 2019, the debtor filed Amended Complaints in the six adversary proceedings against the Growers. The facts alleged by the debtor are the same as those alleged in the original Complaints. However, the debtor removed the cause of action for Breach of Contract in each of the adversary proceedings and instead included a claim for Turnover of Property of the Estate Pursuant to 11 U.S.C. § 542. All Growers answered the Amended Complaints. Counterclaim Growers again asserted counterclaims against the debtor. All Growers again requested a jury trial on all issues so triable.

The debtor filed Objections to Claims to all the Growers’ claims against the bankruptcy estate. In the Objections to Claims, debtor sought the denial of the Growers’ claims pursuant to § 502(d). The Growers contend that the debtor’s objections based on § 502(d) are premature because § 502(d) requires, as a prerequisite to disallowance of the claims, a finding that the Growers are liable to the estate. The debtor, on the other hand, contends that the court has discretion to treat the Growers’ claims as temporarily disallowed, subject to reconsideration following adjudication on the issue of whether the Growers are liable to the estate. Both the debtor and all Growers have now briefed the § 502(d) and the jury trial demand issues and they are ripe for adjudication.

DISCUSSION

I. 502(d) Issue

11 U.S.C. § 502(d) (2005) states in pertinent part:

Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title.

There is a split of authority on the issue of whether it is premature to disallow a bankruptcy claim under § 502(d) prior to a final adjudication on the merits of an avoidance and recovery adversary proceeding. *Seitz v. Frorer (In re Covenant Partners, L.P.)*, 531 B.R. 84, 100 (Bankr. E.D. Pa. 2015). However, the weight of the authority holds that it is premature to disallow the Growers' claims under § 502(d) prior to an adjudication on the merits of the adversary proceedings. *See, e.g., Sikirica v. US Foods, Inc. (In re Damon's Int'l, Inc.)*, 500 B.R. 729, 739 (Bankr. W.D. Pa. 2013) ("Because the Defendant has not yet been found liable, the Trustee cannot set forth a plausible claim under section 502(d)[.]"); *Barkley v. West, et al (In re West)*, 474 B.R. 191, 202-03 (Bankr. N.D. Miss. 2012) ("[T]his court is bound by Fifth Circuit authority which provides that § 502(d) is designed to be triggered after a creditor has been 'adjudicated' to turn over amounts belonging to the bankruptcy estate. The Fifth Circuit's decision comports with the plain meaning of the statute."); *Enron Corp. v. Springfield Assocs., L.L.C. (In re Enron Corp.)*, 379 B.R. 425, 438 (Bankr. S.D.N.Y. 2007) (Laying out three reasons why, "with respect to disallowance, the plain language of section 502(d) reveals that disallowance cannot be fixed on the petition date."); *Seta Corp. v. Atl. Comput. Sys. (In re Atl. Comput. Sys.)*, 173 B.R. 858, 862 (Bankr. S.D.N.Y. 1994) (Interpreting 3 *Collier on Bankruptcy* 502.04 (15th ed. 1993) to support the Fifth Circuit's

interpretation of § 502(d), that a determination of claimant's liability must be made before its claim can be disallowed, and that should there be an adverse determination then there should be an opportunity afforded to turn over that property.); *In re Lids Corp.*, 260 B.R. 680, 684 (Bankr. D. Del. 2001) ("To disallow a claim under section 502(d) requires a judicial determination that a claimant is liable.").

"[T]he purpose of section 502(d) is to ensure compliance with judicial orders." *In re Odom Antennas, Inc.*, 340 F.3d 705, 708 (8th Cir. 2003). The language of the statute, "indicates section 502(d) should be used to disallow a claim after the entity is first adjudged liable; otherwise, the court could not determine if the exception applies." *Id.* (citing *In re Davis*, 889 F.2d 658, 661 (5th Cir. 1989)). "This section is designed to be triggered after a creditor has been afforded a reasonable time in which to turn over amounts adjudicated to belong to the bankruptcy estate." *In re Davis*, 889 F.2d at 662. "The creditor is still entitled to a reasonable time after the final determination until Section 502(d) is kicked into effect." *Id.*

There are some district courts that have held that § 502(d) can be applied to disallow a claim prior to an adjudication on the merits of an adversary proceeding, subject to reconsideration if the defendant should prevail at trial. *See Thaler v. Korn*, 2014 U.S. Dist. LEXIS 37152 (E.D.N.Y. 2014); *In re Circuit City Stores, Inc.*, 426 B.R. 560 (Bankr. E.D. Va. 2010). However, the court finds that these decisions are not consistent with the spirit of the rule. "502(d) is designed to foster the 'restoration' of assets to a debtor's estate, thereby assuring 'equality of distribution' . . . by precluding anyone who has received a voidable transfer from sharing in any distribution . . . unless he first pays back any preference that he has received." *In re Chase & Sanborn Corp.*, 124 B.R. 368, 371 (Bankr. S.D. Fla. 1991) (citing *Keppel v. Tiffin Sav. Bank*, 197 U.S. 356 (1905); *Irving Trust Co. v. Frimitt*, 1 F. Supp. 16, 18 (S.D.N.Y. 1932); *Matter of Mid Atlantic Fund, Inc.*,

60 B.R. 604, 609-10 (Bankr. S.D.N.Y. 1986); *Matter of Georgia Steel, Inc.*, 38 B.R. 829, 839 (Bankr. Md. Ga. 1984)).

This court agrees with courts that have held that § 502(d) is not applicable until there has been a judicial determination of liability on the part of the Growers. Section 502(d) cannot be invoked to ensure the Grower Defendants comply with a judicial order to turn over property to the bankruptcy estate when there has been no such order entered. The requisite judicial determination will come at the conclusion of the trials on the six adversary proceedings against the Growers. Because there has been no judicial determination of the Growers' liability, denying the Growers' claims against the debtor's estate is premature.

Therefore, the debtor's objections to claims of Blake Gary Adams, William Gary Adams, Keith Smith, Strickland Farming Partnership, D & T Farms, Inc., and Warren Farming Partnership, under 11 U.S.C. § 502(d) are hereby held in abeyance pending the outcome of the six adversary proceedings trials.

II. Jury Trial Demands

The right to a jury trial is provided by the Seventh Amendment of the United States Constitution: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." The Supreme Court has determined a two-prong test to decide if a litigant is entitled to a jury trial under the Seventh Amendment. *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 42 (1989). The first step is to compare the "action to 18th-century actions brought in the courts of England prior to the merger of the courts of law and equity." *Id.* (quoting *Tull v. United States*, 481 U.S. 412, 417-418 (1987)). The second step is to, "examine the remedy sought and determine whether it is legal or equitable in nature." *Id.* "The second stage of this analysis is more important than the first." *Id.*

A. Proof of Claim Growers

Granfinanciera expressly restricted the right to a jury trial in a bankruptcy proceeding: “[B]y submitting a claim against the bankruptcy estate, creditors subject themselves to the court’s equitable power to disallow those claims, even though . . . the Seventh Amendment would have entitled creditors to a jury trial had they not tendered claims against the estate.” *Granfinanciera*, 492 U.S. at 59 n.14. The Supreme Court later reaffirmed this assertion in *Langenkamp*:

In *Granfinanciera* we recognized that by filing a claim against a bankruptcy estate the creditor triggers the process of “allowance and disallowance of claims,” thereby subjecting himself to the bankruptcy court’s equitable power. If the creditor is met, in turn, with a preference action from the trustee, that action becomes part of the claims-allowance process which is triable only in equity. In other words, the creditor’s claim and the ensuing preference action by the trustee become integral to the restructuring of the debtor-creditor relationship through the bankruptcy court’s equity jurisdiction. As such, there is no Seventh Amendment right to a jury trial. If a party does *not* submit a claim against the bankruptcy estate, however, the trustee can recover allegedly preferential transfers only by filing what amounts to a legal action to recover a monetary transfer. In those circumstances the preference defendant is entitled to a jury trial. Accordingly, “a creditor’s right to a jury trial on a bankruptcy trustee’s preference claim depends upon whether the creditor has submitted a claim against the estate.”

Langenkamp v. Culp, 498 U.S. 42, 44-45 (1990) (citing *Granfinanciera*, 492 U.S. at 57-59). “If a subsequent action alleging preferential transfers is filed against the creditor, that action becomes part of the claims-allowance process, ‘integral to the restructuring of the debtor-creditor relationship through the bankruptcy court’s equity jurisdiction,’ and the creditor is not entitled to a jury trial.” *Official Comm. of Unsecured Creditors v. Schwartzman (In re Stansbury Poplar Place, Inc.)*, 13 F.3d 122, 125-26 (4th Cir. 1993) (citing *Langenkamp*, 498 U.S. at 44; *Granfinanciera*, 492 U.S. at 57-58). “[B]y filing a claim with the bankruptcy court against the bankruptcy estate, a creditor places his dispute with the debtor into the arena of public rights. . . .

[A] creditor who files a claim with the bankruptcy court loses his Seventh Amendment right to a jury trial.” *Murray v. Richmond Steel & Welding Co. (In re Hudson)*, 170 B.R. 868, 873-74 (Bankr. E.D.N.C. 1994).

Based on the foregoing discussion, the three Proof of Claim Growers, Strickland Farming Partnership, D&T Farms, Inc., and Warren Farming Partnership, are not entitled to a jury trial in the adversary proceedings brought by the debtor.

B. Counterclaim Growers

In addition, filing a counterclaim against the debtor in an adversary proceeding within the bankruptcy also results in the loss of the Seventh Amendment right to a jury trial. In *Charlotte Commercial Group, Inc., v. Fleet National Bank (In re Charlotte Commercial Group, Inc.)*, 288 B.R. 715, 718 (Bankr. M.D.N.C. 2003), the court stated that both the Bankruptcy Court in the Eastern District and the Western District of North Carolina “have held that where a debtor brings an adversary proceeding and the creditor files a counterclaim against the debtor, the creditor has succumbed to the jurisdiction of that court and waived its right to a jury trial.” (citing *Murray v. Richmond Steel & Welding Co. (In re Hudson)*, 170 B.R. 868, 873-74 (Bankr. E.D.N.C. 1994); *Ga. Neurosurgical Clinic Profit Sharing Plan v. Rudow (In re Robin Hood, Inc.)*, 192 B.R. 124 (Bankr. W.D.N.C. 1995)).

In *Hudson*, the court found, “convincing authority has held that a counterclaim does qualify as a ‘claim’ for purposes of the above-described *Granfinanciera* and *Langenkamp* private rights jury trial analysis.” *In re Hudson*, 170 B.R. at 874 (citing *Rushton v. Phila. Forest Prods. (In re Americana Expressways)*, 161 B.R. 707 (Bankr. D. Utah 1993); *Allied Cos. v. Holly Farms Foods, Inc. (In re Allied Cos.)*, 137 B.R. 919 (Bankr. S.D. Ind. 1991); *Shields v. Ciccone (In re Lloyd Sec. Inc.)*, 156 B.R. 750 (Bankr. E.D. Pa. 1993)). Importantly, *Hudson* noted that filing the

counterclaim is not itself what waives the right to a jury trial, it is the seeking of a piece of the disputed res – the bankruptcy estate – that subjects the counterclaimant to the bankruptcy court’s equitable jurisdiction to allow and disallow claims. *Id.* at 875.

Some courts have decided that only a defendant that files a *permissive* counterclaim in the bankruptcy will lose the Seventh Amendment right to a jury trial, by subjecting itself to the bankruptcy court’s equitable jurisdiction, but a defendant that files a compulsory counterclaim will retain the right to a jury trial. *See, e.g., Beard v. Braunstein*, 914 F.2d 434, 442 (3d Cir. 1990). But “an overwhelming majority of courts have determined that parties who file counterclaims, *whether permissive or compulsory*, trigger the bankruptcy court's process of allowance and disallowance of claims, thereby subjecting themselves to the equitable power of a bankruptcy court, waiving their Seventh Amendment right to a jury trial.” *Control Ctr., L.L.C. v. Lauer (In re Control Ctr., L.L.C.)*, 288 B.R. 269, 281 (Bankr. M.D. Fla. 2002) (emphasis added) (citing *Leshin v. Welt (In re Warmus)*, 276 B.R. 688, 693-94 (Bankr. S.D. Fla. 2002); *In re Hudson*, 170 B.R. 868, 874-875; *Segal v. CA. Energy Dev. Corp.*, 167 B.R. 667, 672 (Bankr. D. Utah 1994); *Peachtree Lane Assocs., Ltd. v. Granader*, 175 B.R. 232, 236-237 (Bankr. N.D. Ill. 1994); *In re Allied Cos., Inc.*, 137 B.R. 919, 924-25; *Schwinn Plan Comm. Co. v. AFS Cycle & Co. (In re Schwinn Bicycle Co.)*, 184 B.R. 945, 953 (Bankr. N.D. Ill. 1995); *In re Robin Hood, Inc.*, 192 B.R. 124; *In re Americana Expressways, Inc.*, 161 B.R. 707, 714 n.12; *In re Lloyd Sec. Inc.*, 156 B.R. 750, 755; *Bayless v. Crabtree*, 108 B.R. 299, 305 (Bankr. W.D. Okla. 1989); *Anderson v. Simchon (In re Southern Textile Knitters, Inc.)*, 236 B.R. 207, 210 (Bankr. D.S.C. 1999); *Beverage Enters. v. Hornell Brewing Co., Inc. (In re Pocono Springs Co.)*, 1997 Bankr. LEXIS 1750, 6-8 (E.D. Pa. 1997)). In fact, the *Hudson* court held specifically that, “[r]egardless of whether the counterclaim was permissive or compulsory, it represented the defendant's attempt to obtain a portion of the

debtors' estate[,]" and therefore it triggers the allowance or disallowance of the claims. *In re Hudson*, 170 B.R. at 875.

The Counterclaim Growers' argument relies on cases that fall in the minority such as *J.T. Moran Financial Corp., v. American Consolidated Financial Corp. (In re J.T. Moran Financial Corp.)*, 124 B.R. 931, 940 (Bankr. S.D.N.Y. 1991), which held that for a defendant to impliedly waive its right to a jury trial based on filing a compulsory counterclaim "would be to condone jurisdiction by ambush." The court has considered the case law and sides with the majority of courts that have held a waiver of the right to a jury trial by asserting a counterclaim against the estate because, "despite [the] conclusion that the counterclaim is compulsory, the claim nonetheless seeks damages from the bankruptcy estate." *In re Warmus*, 276 B.R. 688, 693. That the Growers' counterclaims were compulsory "is irrelevant to the Supreme Court's decisions that seeking money from the bankruptcy estate acts as a waiver of the right to a jury trial[.] . . . That the Supreme Court's interpretation of this scheme seems unfair . . . is beyond this Court's authority to remedy." *Id.*

Based on the foregoing discussion, the four Counterclaim Growers, Blake Adams, William Adams, Keith Smith, and Warren Farming Partnership, have no right to a jury trial in these adversary proceedings either.

CONCLUSION

Based on the foregoing, the debtor's objections to claims under 11 U.S.C. § 502(d) are held in abeyance pending the outcome of the adversary proceedings; and the Grower Defendants' demands for jury trials are hereby STRICKEN.

END OF DOCUMENT

Applicant Details

First Name **Chasmine**
 Middle Initial **L**
 Last Name **Williams**
 Citizenship Status **U. S. Citizen**
 Email Address chasminewilliams@utexas.edu
 Address

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LaMarque
State/Territory
Texas
Zip
77568
Country
United States

Contact Phone Number **4099395621**

Applicant Education

BA/BS From **Spelman College**
 Date of BA/BS **May 2019**
 JD/LLB From **The University of Texas School of Law**
<http://www.law.utexas.edu>
 Date of JD/LLB **May 21, 2022**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **American Journal of Criminal Law**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial Internships/
 Externships **Yes**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Professional Organization

Organizations **Just The Beginning Foundation**

Recommenders

Hoffman, Robert
rhoffman@aclu.org
Moore, Leonard
leonardmoore@mail.utexas.edu
Cantu, Norma
ncantu@law.utexas.edu

References

Professor Norma Cantu (ncantu@law.utexas.edu; 512-475-8593)
Dr. Leonard Moore (LeonardMoore@mail.utexas.edu; 512-475-7254)
Robert Hoffman (rhoffman@aclu.org; 219-218-2463)
This applicant has certified that all data entered in this profile and any application documents are true and correct.

Chasmine L Williams

3222 Hoover St. La Marque, Texas 77568 ♦ 409-939-5621 ♦ chasminewilliams@utexas.edu

June 30, 2021

The Honorable Elizabeth Hanes
U.S. Magistrate Judge
U.S. District Court for the Eastern District of Virginia
701 East Broad Street
Richmond, VA 23219

Dear Judge Hanes,

I am currently a rising third-year student at The University of Texas School of Law and I am applying for a 2022-2024 term clerkship in your chambers. After law school, I intend on establishing my legal career on the East Coast and as an aspiring attorney in the Department of Justice, I am particularly interested in clerking in your chambers.

Throughout my undergraduate and law school experiences, I have gained important skills that will allow me to contribute greatly to your chambers. As a first-generation college student, I will not only contribute my demonstrated strong work ethic and my legal research and writing ability, but also my unique and diverse background. Throughout my life I have overcome adversity through commitment and determination and these experiences has molded me into the passionate public servant that I am today. I believe that serving as your law clerk will allow me to further my passion for public service by making a meaningful impact as I help you fulfill your judicial duties.

My application includes a resume, law school transcript, undergraduate transcript and a writing sample. You will also be receiving letters of recommendation from Professor Norma Cantu, Dr. Leonard Moore and Mr. Robert Hoffman. These recommenders may be reached as follows:

- Professor Norma Cantu, The University of Texas School of Law
ncantu@law.utexas.edu; 512-475-8593
- Dr. Leonard Moore, The University of Texas School of Law; George Littlefield Professor of American History
LeonardMoore@mail.utexas.edu; 512-475-7254
- Robert Hoffman, National Political Advocacy Department, Democracy Division
rhoffman@aclu.org; 219-218-2463

If I may provide any additional information, please contact me. Thank you for your time and consideration.

Respectfully,

Chasmine Williams

Chasmine L. Williams

3222 Hoover St., La Marque Texas 77568 ♦ 409-939-5621 ♦ chasminewilliams@utexas.edu

EDUCATION

THE UNIVERSITY OF TEXAS SCHOOL OF LAW, Austin, TX

Juris Doctor expected May 2022

GPA: 3.26; Spring 2021 GPA: 3.51

American Journal of Criminal Law, Executive Editor

Southwestern Black Law Student Association

Texas Law Fellowships

SPELMAN COLLEGE, Atlanta, GA

Bachelor of Arts in Political Science with highest honors, May 2019

GPA: 3.96

Phi Beta Kappa

Spelman College Senior Class Council, Secretary

Honor's Thesis: "Why Are We So Divided? Gerrymandering and Polarization in Congressional Elections"

Senior Thesis: "The Impact of African Socialism: The Cases of Post-Colonial Kenya and Tanzania 1960 – 1985"

LEGAL EXPERIENCE

THE HONORABLE ROBERT PITMAN, DISTRICT JUDGE

U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, Austin, TX

Legal Intern, August 2021 – December 2021 (expected)

DEPARTMENT OF JUSTICE, LEGAL INTERN, Washington, D.C.

Civil Rights Division, Voting Rights Section, May 2021-August 2021

AMERICAN CIVIL LIBERTIES UNION INTERN, Washington, D.C.

National Political Advocacy Department, Democracy Division, Legal Intern, June 2020-August 2020

Conducted legal and policy research on topics including Texas and Georgia Election Law

MITHOFF PRO BONO PROGRAM, THE UNIVERSITY OF TEXAS SCHOOL OF LAW, Austin, TX

Expunction Project, September 2019

Conducted client intake and assisted clients with drafting petitions for expunction.

ProBAR, January 2020

Completed interviews and assisted clients with asylum applications.

PROFESSIONAL DEVELOPMENT ACTIVITIES

SQUIRE PATTON BOGGS FOUNDATION PUBLIC POLICY FELLOW, Washington, D.C.

Participant, May 2021 – August 2021

Participated in professional development seminars and a mentorship program

SKILLS AND INTERESTS

Volunteering, watching documentaries, political news podcasts

Prepared on 06/09/2021

THE UNIVERSITY OF TEXAS SCHOOL OF LAW

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OFFICIAL NAME: WILLIAMS, CHASMINE L.

ADMIT: 08-28-2019

TOTAL CREDIT HOURS: 58.00

PREFERRED NAME: Williams, Chasmine Lashelle

CUMULATIVE GPA: 3.26

				SEMESTER	HOURS ATTEMPT	HOURS PASS	EXCLUDE P/F	SEM AVG
FAL 2019	527	TORTS	5.0 B	SHW				
	431	PROPERTY	4.0 C+	AKU				
	332R	LEGAL ANALYSIS AND COMM	3.0 B	EMY	FAL 2019	16.00	16.00	2.75
	433	CIVIL PROCEDURE	4.0 B-	LSM	SPR 2020	30.00	30.00	0.00
SPR 2020	421	CONTRACTS	P/F 4.0	CR KH	FAL 2020	46.00	46.00	3.63
	423	CRIMINAL LAW I	P/F 4.0	CR JEL	SPR 2021	58.00	58.00	3.51
	232S	PERSUASIVE WRTG AND ADV	P/F 2.0	CR NJR				
	434	CONSTITUTIONAL LAW I	P/F 4.0	CR RMC				
FAL 2020	397S	SMNR: CHANGING AMER SCH	3.0 A	NVC				
	269	INSURANCE-WB	2.0 A-	RA				
	481C	CONST LAW II: AMNDMNTS	4.0 B+	LAP				
	385	PROFESSIONAL RESPONSIBI	3.0 B+	FSM				
	132D	ADV LGL WR: WORKSHOP-WB	P/F 1.0	CR WCS				
	346K	NEGOTIATION	3.0 A	MSC				
SPR 2021	483	EVIDENCE-WB	4.0 B	SJG				
	397S	SMNR: RACE AND POLITICS	3.0 A	LNK				
	232D	ADV LGL WR: LITIGATION-	P/F 2.0	CR RML				
	340	FAMILY LAW-WB	3.0 A-	LF				

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Page: 1

Record of: Chasmine Lashelle Williams
Current Name: Chasmine L. Williams
Issued To: CHASMINE WILLIAMS
3222 HOOVER ST.
LA MARQUE, TX 77568-3428

Course Level: Undergraduate
Matriculated: Fall 2015

Current Program					SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
College : Liberal Art & Science					Institution Information continued:			
Major : Political Science								
Minor : History								
Degree Awarded Bachelor of Arts 19-MAY-2019					Spring 2017			
Primary Degree					Liberal Art & Science			
Major : Political Science					Political Science			
Minor : History								
Inst. Honors: Summa Cum Laude								
SUBJ NO.	COURSE TITLE	CRED GRD	PTS R					
TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:					Spring 2017			
FALL 2013					Liberal Art & Science			
College Of The Mainland					Political Science			
AA 001	Federal Government	3.00 TR			SCWS 370	Women & Social Resistance Move	4.00 A-	14.80
SECO 241	Principles of Macroeconomics	3.00 TR			SPHI 191	Honors Philosophy Seminar	4.00 A	16.00
SHIS 211	Surv American Hist to 1877	3.00 TR			SPSC 317	Blk Wmn:Dev Public Leadership	4.00 A	16.00
SHIS 212	Survey of American History II	3.00 TR			SPSC 325	Comparative Political Systems	4.00 A	16.00
SPSY 200	General Psychology	3.00 TR			SPSC 363	American Foreign Policy	4.00 A	16.00
Ehrs: 15.00	GPA-Hrs: 0.00	QPts: 0.00	GPA: 0.00		STS 100	CIEE-Barcelona, Spain	0.00 P	0.00
INSTITUTION CREDIT:					SYE 104	Sophomore Seminar Leadership	0.00 P	0.00
Fall 2015					Ehrs: 20.00	GPA-Hrs: 20.00	QPts: 78.80	GPA: 3.94
Liberal Art & Science					Deans List			
Political Science					Good Standing			
SADW 111	African Diaspora & the World	4.00 A-	14.80		Summer 2017			
SCIS 100	Introduction to Computers	4.00 A-	14.80		Liberal Art & Science			
SENG 103	First-Year Composition	4.00 A	16.00		Political Science			
SFYC 100	First Year Colloquia	1.00 A	4.00		SIS 3401	Intercultural Engagement	3.00 A	12.00
SFYE 101	First Year Experience	1.00 P	0.00		*CIEE: Barcelona, Spain*			
SMAT 107	Contemporary Mathematics	3.00 A	12.00		Ehrs: 3.00	GPA-Hrs: 3.00	QPts: 12.00	GPA: 4.00
Ehrs: 17.00	GPA-Hrs: 16.00	QPts: 61.60	GPA: 3.85		Good Standing			
Deans List					Fall 2017			
Good Standing					Liberal Art & Science			
Spring 2016					Political Science			
Liberal Art & Science					SHIS 201	Introduction to History	4.00 A	16.00
Political Science					SPSC 316	Civil Liberties	4.00 A	16.00
SADW 112	African Diaspora & the World	4.00 A	16.00		SPSC 321	International Relations	4.00 A	16.00
SFIS 201	Intermediate Spanish I	4.00 A	16.00		SPSC 415	Intro to Pol Theory	4.00 A	16.00
SFYE 102	First Year Experience	1.00 P	0.00		SPSC 483	Afro-Americans in Politics	4.00 A	16.00
SHPE 117	Walking/Jogging	1.00 A	4.00		Ehrs: 20.00	GPA-Hrs: 20.00	QPts: 80.00	GPA: 4.00
SMUS 121	Intro to World Music	4.00 A	16.00		Deans List			
SPSC 201	National Government in the US	4.00 A	16.00		Good Standing			
Ehrs: 18.00	GPA-Hrs: 17.00	QPts: 68.00	GPA: 4.00		Spring 2018			
Deans List					Liberal Art & Science			
Good Standing					Political Science			
Fall 2016					SENG 215	Twentieth-Cent Blk Wmn Writers	4.00 A	16.00
Liberal Art & Science					SHIS 202	Research Methods in History	4.00 A	16.00
Political Science					SHIS 303	Making of the Modern World	4.00 A	16.00
S BIO 100	Biology of Women	4.00 A	16.00		SHIS 333	Islam in Africa	4.00 A	16.00
SECO 241	Principles of Macroeconomics	4.00 A	16.00		Ehrs: 16.00	GPA-Hrs: 16.00	QPts: 64.00	GPA: 4.00
SFIS 202	Intermediate Spanish II	4.00 A	16.00		Deans List			
SPSC 203	Data Analysis & Research Meth	4.00 A	16.00		Good Standing			
SYE 103	Soph Sem: Pub Speaking	1.00 P	0.00		Fall 2018			
Ehrs: 17.00	GPA-Hrs: 16.00	QPts: 64.00	GPA: 4.00		Liberal Art & Science			
Deans List					Political Science			
Good Standing					SHIS 402	Senior Research Project	4.00 A	16.00
***** CONTINUED ON NEXT COLUMN *****					SPSC 315	American Constitutional Law	4.00 A-	14.80
					SPSC 497	Senior Seminar	4.00 A	16.00
					SWEL 102	Yoga and Meditation	0.00 P	0.00
					Ehrs: 12.00	GPA-Hrs: 12.00	QPts: 46.80	GPA: 3.90
					Good Standing			
					Spring 2019			
					Liberal Art & Science			
					Political Science			
					SPSC 202	State & Local Government	4.00 A	16.00
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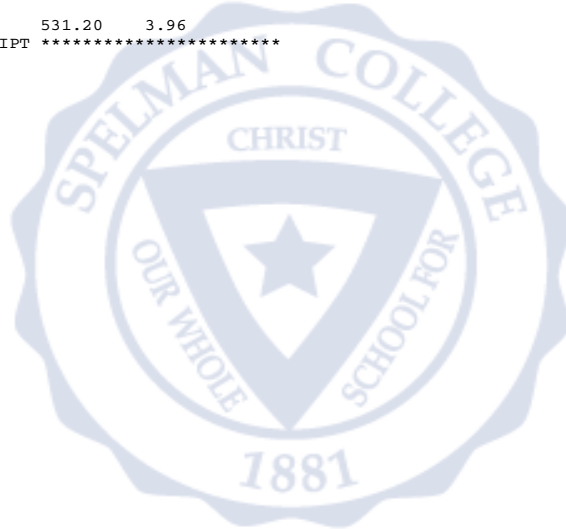
Date of Birth: 14-APR

Date Issued: 09-JUN-2021
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Record of: Chasmine Lashelle Williams

Page: 2

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
Institution Information continued:			
SPSC 300A	Special Topics: Legal Series	2.00 A	8.00
SPSC 400	Honors Independent Study	4.00 A	16.00
SPSC 420C	Spec Topics: Env Law	4.00 A	16.00
Ehrs: 14.00 GPA-Hrs: 14.00 QPts: 56.00 GPA: 4.00			
Good Standing			
Last Standing: Good Standing			
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	Earned Hrs	GPA Hrs	Points GPA
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TOTAL TRANSFER	15.00	0.00	0.00 0.00
OVERALL	152.00	134.00	531.20 3.96
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John A. Brown, Registrar



June 30, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

My name is Bobby Hoffman and I am the Deputy Director of the Democracy Division at the American Civil Liberties Union. I am drafting this letter to enthusiastically recommend Chasmine Williams for a judicial clerkship in your chambers.

During the summer of 2020 I was the primary supervisor for Chasmine during her legal internship at ACLU. Our staff noticed Chasmine's exceptional research, writing and communication skills early on in her internship. We quickly put her skills and passion to use in our advocacy efforts. Chasmine's assignments required researching, understanding, consolidating, and presenting information on federal, state, and local election laws and regulations.

Chasmine managed a variety of projects during her summer at ACLU including providing policy briefings and attending meetings with Congressional staff to advocate for youth voting legislation, conducting legal research for a campaign to expand access to voting in the Harris County Jail (TX), and researching local election regulations and authority to expand access to early voting and provide additional drop boxes in four targeted counties in Georgia. These projects highlighted Chasmine's exceptional ability to manage multiple assignments, work exceedingly well with coworkers, understand complex information and convey research to a broad audience including Congressional staffers, campaign strategists, local election administrators and volunteers.

In summation, Chasmine was an outstanding employee and I highly recommend her for a clerkship position in your chambers. Please feel free to contact me directly if you have any questions.

Sincerely,

Bobby Hoffman
Deputy Director, Democracy Division - ACLU
915 15th Street NW
Washington, D.C. 20005
219-218-2463
rhoffman@aclu.org

Robert Hoffman - rhoffman@aclu.org



DEPARTMENT OF HISTORY
THE UNIVERSITY OF TEXAS AT AUSTIN

Garrison Hall, 128 Inner Campus Drive, Stop B7000 • Austin, Texas • 78712 • 512-471-3261

June 12, 2021

Dear Selection Committee:

It is with great pleasure and tremendous enthusiasm that I write this letter of recommendation on behalf of Chasmine Williams who is applying for a clerkship through the Administrative Office of the U.S. Courts OSCAR Program Office. I have known Chasmine as a professor, mentor, advisor, and friend, since she was a student in my race and politics class. I am certain that I can speak to her potential as a clerk.

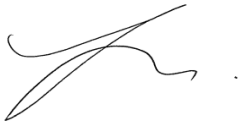
I initially met Chasmine when she enrolled in my race and politics seminar. Since the class had an intentionally small enrollment of 7 students I was able to make a strong assessment of her ability to research, write, and speak persuasively. Within the first few weeks of the semester she managed to stand out from the rest of the class for her thoughtful questions and her inquisitive demeanor. In terms of class participation she was actively engaged and it became clear that she had a bright future. We often engaged in conversations outside the class and she was very inquisitive about the course material, her future beyond law school, and ways in which she wanted to impact her community long-term. For her final project she completed a well-researched paper on voter access and voter suppression. The paper was well-written, well-researched, heavily-sourced, concise, and to-the-point. While I am not certain what specific types of documents and briefs she would be expected to write as a clerk, I am confident that she will be more than capable at producing high-quality work.

Chasmine is a 2019 graduate of Spelman College who is currently enrolled in law school at the University of Texas School of Law. She finished at Spelman with a 3.96 GPA where she was also a member of Phi Beta Kappa. At the UT Law School she currently has a 3.63 GPA and she is staff editor for the *American Journal of Criminal Law*. In terms of practical experience she has held a number of internships. She is

currently a legal intern with the Department of Justice Voting Rights Section and last summer she was a Union Intern with the American Civil Liberties Union. Last summer she was selected out of a very competitive pool of applicants for the Diversity Mentorship Program at Sidley Austin LLP.

In closing, Chasmine is a young woman with high character, impeccable integrity, and a tireless work ethic. I recommend her highly, without reservation, and with great hope that you will respond favorably to her application.

God Bless,

A handwritten signature in dark ink, appearing to read 'Leonard N. Moore', with a stylized flourish at the end.

Leonard N. Moore

George Littlefield Professor of American History

June 30, 2021

The Honorable Elizabeth Hanes
 Spottswood W. Robinson III & Robert R. Merhige,
 Jr., U.S. Courthouse
 701 East Broad Street, 5th Floor
 Richmond, VA 23219

Dear Judge Hanes:

I enthusiastically recommend Ms. Chasmine Williams for a judicial clerkship. As a former student of mine at The University of Texas at Austin, she earned an A in a seminar I taught at the Law School in fall 2020. I am proud to say she considers me one of the advisors of this very talented rising 3L who is proud of her background as an African American female law student, and who has the potential to make great contributions to the legal community.

I am aware of the high standards for judicial clerkships because I have been a full professor at UT Austin since 2002, with dual-teaching responsibilities at the College of Education and the School of Law. Prior to UT Austin, I served the White House for eight years as the Assistant Secretary for Civil Rights in the U.S. Department of Education where I oversaw a staff of 800, including more than 100 attorneys. I have chaired hiring committees and understand the many variables that are considered in hiring in the legal arena.

To write this letter, I spoke with Ms. Williams and reviewed the work she produced for the seminar I taught called "Changing American Schools." I also read her updated resume and her statement on her reasons for pursuing a judicial clerkship. She has shared with me that her goal is to work as an attorney in the federal government. For many reasons, I have encouraged her to apply for a federal clerkship. In my opinion, Ms. Williams' legal preparation is highly competitive, fitting very well into the job descriptions for judicial clerks. In this letter, I will focus on the areas of research, communication, and leadership skills.

Ms. Williams' research skills are excellent. A diligent scholar, she is always interested in improving her skills and widening her understanding of a variety of professional fields that impact the law. For example, in our writing seminar, she was very attentive to learning about the long line of cases involving education law, and the social science databases contained in the campus library system, particularly with regards to scholars who conduct research on education policy. She finished all the readings on court decisions that merged social science, with legal theory, and pedagogy. She showed interest in the successful cases on school finance, seeing how the economic theories informed the judge's rulings to urge the policymakers expand the funding stream, rather than to cut the educational fiscal pie into painfully thin slices. She learned how key lawyers, from Thurgood Marshall to Ruth Bader Ginsburg, turned to the research conducted by numerous experts to undergird legal arguments and advocacy. I noticed that Ms. Williams' approach to research was remarkably thorough and respectful of precedent. She was also a timely and efficient researcher, never missing of the research deadlines in my class. I saw in her final paper on the Twenty-Sixth Amendment and voting youth a cohesive and coherent discussion of federal constitutional law.

In addition to the coursework required at law school to perfect the research skills, Ms. Williams has clearly sought out professional opportunities to hone her research skills. In her 2020 summer internship, for example, as an intern, she conducted legal research on federal and state laws regarding election laws for the national ACLU Democracy Division in Washington, D.C. She is also researching federal topics for the U.S. Department of Justice, Voting Rights Section, in the 2021 summer where she is an intern in D.C. Further, she is Staff Editor of the American Journal of Criminal Law, a student-edited journal with the mission of "promoting and encouraging improvement in the administration of criminal law." It follows that these research and editing activities will add to the strong research skills I observed in Ms. Williams in late 2020 and will continue to grow until she graduates law school in spring 2022.

Similarly, Ms. Williams' communications skills are formidable. She is drawn to nonfiction, particularly books, articles, and podcasts related to political science. She has practiced her communications with future clients in professional development activities that include oral and written contacts in the Sidley Austin Program and Proskauer Preparation program. She also handled client intake in the Mithoff Pro Bono Program at the UT Law School. The projects in the Mithoff Program are particularly taxing as they deal with expunction of records and immigration issues arising from detentions on the South Texas border. She has drafted legal documents in her prior internships (although I did not ask her to discuss with me the exact tasks she performed in the Department of Justice).

Finally, I have the highest respect for Ms. Williams' leadership abilities. As early as her undergraduate days, she has shown great interest in politics and election law, and she sees herself as an aspirant to become either a voting rights lawyer or a policy-maker. I have encouraged her, partly because I played a small role in the appellate work in *White v. Regester* voting case back in the early 90s, and partly because I put in eight years in the U.S. Department of Education making federal policy in the area of

Norma Cantu - ncantu@law.utexas.edu

Title IX and the Americans with Disability Act and Amendments. Given my work experience, I see in Ms. Williams the commitment to engage in the hard work of learning the skills and abilities she will need to practice in federal court. She is devoted to self-improvement, and has already taken leadership roles in engaging with our law school alumni, serving as staff editor for a law journal, and coordinating a major conference for Black law students in southwestern states. You will find her to be honest, earnest, open to difficult assignments, and cheerful. She has led groups, but she is also supportive of the persons who are making the tough decisions. In fact, she told me what drives her to pursue the clerkship is to observe and learn from the leadership skills of federal and state judges, who are called so often to make tough decisions. If I could hire her, I certainly would. Her academic and leadership skills put her in the top 1% of the students I have taught.

If you require more information, please feel free to reach out to me by email or phone. I am reachable at ncantu@law.utexas.edu or at (210) 380-6380.

Respectfully,

Norma V. Cantú
Ken McIntyre Professor of Law and Education
College of Education, UT Austin
Courtesy appointment with UT School of Law
The University of Texas at Austin
Cell Phone (210) 380-6380

Norma Cantu - ncantu@law.utexas.edu

Chasmine L. Williams

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WRITING SAMPLE

This writing sample is excerpted from a memorandum written for my Advanced Legal Writing course in Spring of 2021. The Table of Contents and Table of Authorities have been omitted.

Movant Lari and Klass LLP Motion to Dismiss

Lari & Klass LLP & Chasmine Williams together file this Motion to Dismiss the claims brought by Plaintiff, City of Dalhart Pension Fund (“Pension Fund”). Because the Plaintiff has failed to allege the necessary elements of legal malpractice and unjust enrichment under New York law, this court should dismiss all claims by the City of Dalhart Pension Fund.

Introduction

The City of Dalhart Pension Fund’s action against the movant, Lari & Klass should be dismissed. The Plaintiff alleges that movant, Lari & Klass LLP, committed legal malpractice resulting in unjust enrichment after the movant’s representation of the Pension Fund during its lawsuits arising out of the Bernard Madoff fraud. However, these claims are unfounded

First, under New York law, to present a prima facie case of legal malpractice, a plaintiff must allege (1) attorney negligence; (2) which is the proximate cause of loss; and (3) actual damages. The complaint must allege that the attorney’s services were below that of a reasonable and competent attorney and that the attorney’s failure to provide reasonable services, was the proximate cause of the plaintiff’s loss. However, Lari & Klass LLP, represented plaintiffs with skill and due diligence, filing approximately 10 lawsuits on behalf of the Pension Fund.

Although the lawsuits were not successful, the mere essence of losing a lawsuit is not evidence of an attorney’s malpractice. In addition, the statute of limitations for a legal malpractice claim under New York law is three years, Lari & Klass LLP has not served as counsel for the Pension Fund since 2015, thereby precluding the Pension Fund’s claim. Thus, even if all the elements of legal malpractice were met, the claim is barred by the statute of limitations.

Second, the Pension Fund alleges that Lari & Klass LLP was unjustly enriched through their representation of the Fund in its Madoff-related litigation. To present a prima facie case of unjust enrichment, a plaintiff must allege (1) defendant was enriched; (2) at plaintiff's expense; and (3) equity and good conscience militate against permitting defendant to retain what plaintiff is seeking to recover. However, under this standard, the claim of unjust enrichment should be dismissed because Lari & Klass received no benefit from their representation of the Pension Fund. Although the Pension Fund did pay about \$10,000 for their representation in the Madoff-related litigation, that payment went directly to the Legal Aid Group. Lari & Klass LLP took the case pro bono. Lari & Klass LLP never received any compensation for their representation and as a result, the plaintiff cannot adequately allege that Lari & Klass LLP, was enriched in any way from their representation.

Statement of Facts

Lari & Klass LLP is a world-renowned law firm based out of Austin, Texas and all fourteen attorneys are licensed to practice law in Texas. (Lari Aff. ¶ 3) In addition to its many services, Lari & Klass LLP employs experts that specialize in fraud and securities-related litigation. (Compl. ¶ 10) The Pension Fund was made up of City of Dalhart employees who had invested into the Pension Fund for their retirement. (Compl. ¶ 9) Under the misplaced guidance of their investment advisor, the Pension Fund invested all of their funds into a fraudulent investment scheme ran by Bernie Madoff. *Id.* This scheme was also facilitated by the negligence of many investment advisors that acted in willful ignorance for their own financial gain, one of which Lari & Klass LLP successfully defended the Pension Fund against in a subsequent defamation suit. *Id.*

As a result of becoming victim to the fraudulent schemes of Bernard Madoff and his assistants, the Pension Fund requested assistance from the Legal Aid Group in hopes of recovering the money lost at the hands of Bernard Madoff. (Compl. ¶ 10) In February of 2009, Lari & Klass LLP received the request to represent the Pension Fund through the Legal Aid Group, with Lari & Klass LLP agreeing to represent the Pension Fund free of charge. *Id.* Through this partnership, Lari & Klass LLP were charged with representing the Pension Fund in their claims against the Madoff Fund and their investment advisors as well as defend them against lawsuits coming from individual investors within the Pension Fund. (Compl. ¶ 11) Although Lari & Klass LLP agreed to represent the Pension Fund on a pro bono basis, their attorneys were dedicated to being zealous advocates for the Pension Fund. (Lari Aff. ¶ 4) The specific attorney from Lari & Klass LLP assigned to this case provided the Pension Fund with the utmost legal skill and competency. (Lari Aff. ¶ 8) In addition, the managing partner of the firm, Raafia Lari, supervised the attorney's work and ensured that the cases were litigated to the highest standards. (Lari Aff. ¶ 9)

The attorney worked diligently in their representation of the Pension Fund, filing about 10 lawsuits and successfully defending the Pension Fund against lawsuits that would have resulted in losing millions of dollars. (Compl. ¶ 11) Unfortunately, most of the Pension Fund's recovery was restricted due to statutory limitations related to securities and bankruptcy law. (Lari Aff. ¶ 8) Regardless of who represented the Pension Fund, recovery would have most likely been statutorily limited to the \$50,000 returned through the Trustee distribution process as pursuant to bankruptcy code. However, although statutory limited, Lari & Klass LLP continued to successfully represent the Pension Fund, including successfully defending the Pension Fund against an \$500,000 claw back claim, a \$2.4 million defamation suit and a \$3 million class action

lawsuit, all of which would have resulted in an even more disastrous financial loss for the Pension Fund. (Lari Aff. ¶ 7) Therefore, although not successful in securing all of the money the Pension Fund lost because of statutory limitations, the attorney was successful in helping the Pension Fund as much as any attorney in their position would have been able to.

As of June 2015, the Pension Fund's case was closed and Lari & Klass LLP ended their representation of the Pension Fund. Since June 2015, Lari & Klass LLP has not had any attorney-client relationship with the Pension Fund. As a result of their representation, Lari & Klass LLP billed over \$175,000 worth of hours and resources. (Lari Aff. ¶ 10) However, because their representation was pro bono, at no time, has Lari & Klass received any compensation from the Pension Fund or the Legal Aid Group.

Motion Standard

Movants submit this motion to dismiss, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. To survive a motion to dismiss, a complaint must contain facts, when, accepted as true, are sufficient to state a claim to relief that is plausible on its face; claim has "facial plausibility" when plaintiff pleads factual content that allows court to draw reasonable inference that defendant is liable for misconduct alleged. *Ashcroft v. Iqbal*, 556 U.S. 662, 662, 129 S. Ct. 1937, 1939, 173 L. Ed. 2d 868 (2009). In order to survive a motion to dismiss, the plausibility standard asks for more than a sheer possibility of defendant's unlawful actions. *Id.* These factual allegations must be above a mere speculative level, presuming that the allegations are true even if doubtful in fact. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 569, 127 S. Ct. 1955, 1973, 167 L. Ed. 2d 929 (2007). "Dismissal is warranted only when a plaintiff fails to nudge his claims across the line towards plausibility." *Id.* When considering a motion to dismiss, the court is to accept as

true all facts that are alleged in the complaint and must draw reasonable inferences in favor of the plaintiff. *Kassner v. 2nd Ave. Delicatessen Inc.*, 496 F.3d 229, 237 (2d Cir. 2007).

Argument

The Pension Fund's claim for legal malpractice and unjust enrichment should be dismissed because even if the facts are presumed in the non-movant's favor, the Pension Fund has failed to state a plausible claim for relief under New York law.

I. Under New York law, the Plaintiff's claim for legal malpractice is precluded by the statutes of limitations which limits a legal malpractice claim to three years after the alleged legal malpractice cause of action initially arose.

The Plaintiff's claim for legal malpractice should be denied because they failed to state a cognizable claim within the statute of limitations mandated under New York law. N.Y. C.P.L.R. 214. New York law applies because a substantial part of the events giving rise to these claims occurred in New York and the movant conducts business in New York. *Rubens v. Mason*, 387 F.3d 183 (2d Cir. 2004) Furthermore, under a diversity action that is based on a claim of attorney malpractice, state substantive law applies. *Nordwind v. Rowland*, 584 F.3d 420 (2d Cir. 2009); *Schutz v. Kagan Lubic Lepper Finkelstein & Gold LLP*, 552 F. App'x 79 (2d Cir. 2014).

According to New York law, the statute of limitations for a legal malpractice claim is limited to three years. *Nobile v. Schwartz*, 56 F. App'x 525, 526 (2d Cir. 2003). Under New York law, the malpractice action begins when all the facts that are necessary for the cause of action occur and when the injured party could potentially receive relief from the court. *Bastys v. Rothschild*, 154 F. App'x 260, 261 (2d Cir. 2005). In this case against Lari & Klass LLP, the last attorney action on the case was in June 2015, almost 6 years before this lawsuit was brought. In New York, the failure to bring a claim of legal malpractice within three years after ending the

attorney-client relationship results in the denial of a legal malpractice cause of action. *MIG, Inc. v. Paul, Weiss, Rifkind, Wharton & Garrison, L.L.P.*, 701 F. Supp. 2d 518, 534 (S.D.N.Y. 2010), aff'd, 410 F. App'x 408 (2d Cir. 2011). Furthermore, “an action to recover damages for non-medical professional malpractice, begins to run at the time the malpractice occurs, not when the client discovers it. *Tenamee v. Schmukler*, 438 F. Supp. 2d 438 (S.D.N.Y. 2006); *Hoffenberg v. Hoffman & Pollok*, 288 F.Supp.2d 527, 536 (S.D.N.Y.2003) In the cause of action against Lari & Klass LLP, the alleged cause of action had to have occurred at least 6 years prior to this lawsuit. Since the ending of representation in 2015, there has been absolutely no attorney-client relationship with the Pension Fund and therefore, this claim should be dismissed.

Under New York, the only way this claim of legal malpractice could still be brought is if the statute of limitations were tolled. The statute of limitations could be tolled through the theory of continuous representation which continues until the attorney stops representing the client in the matter that is at issue. *Nobile v. Schwartz*, 56 F. App'x 525, 526 (2d Cir. 2003). For example, in *Nobile*, the court held that continuous representation required “clear evidence of an ongoing and dependent relationship between the client and the attorney.” *Id.* In that case, the court looked at several factors, including the scope of the defendant’s representation at the time of possible tolling and when did the defendants cease to represent the plaintiff. However, in contrast to the suit against Lari & Klass LLP, the court found that there was a dispute as to whether representation continued thereby tolling the statute of limitations. In this case there is no dispute. There is no evidence to show that Lari & Klass LLP had any contact with the Pension Fund after ending its attorney-client relationship in June 2015. (Lari Aff. ¶ 9) Therefore, this claim for legal malpractice should be dismissed as the statute of limitations have precluded this action and any claim of tolling is unfounded.

II. The Pension Fund failed to allege Negligence or Causation, both elements necessary for a legal malpractice which should result in the dismissal of the Pension Fund's Legal Malpractice claim.

The Pension Fund's motion for legal malpractice should be dismissed because of the Pension Fund's failure to state a cognizable claim mandating relief. To present a prima facie case of legal malpractice, a plaintiff must allege (1) attorney negligence; (2) which is the proximate cause of loss; and (3) actual damages. *Achtman v. Kirby, McInerney & Squire, LLP*, 464 F.3d 328, 336 (2d Cir. 2006). In order to properly plead the element of negligence, the plaintiff must assert that the attorney's conduct failed the ordinary and reasonable skill expected from a competent attorney. *Id.* In filing 10 separate lawsuits, Lari & Klass LLP exercised the ordinary and reasonable skill of a competent and diligent attorney. Although the lawsuits were not successful, it was not because of the attorney's negligence. Instead, the lawsuits failed because of statutory limitations and restrictions that were beyond the control of an attorney. Under New York's definition of legal malpractice, if the court can prove that the attorneys' decision was conscious and reasonable, the attorney's actions were not negligent. *Id.*; *CVR Energy, Inc. v. Wachtell, Lipton, Rosen, & Katz*, 830 F. App'x 330 (2d Cir. 2020). Attorneys must be given the freedom to make decisions and a simple error of attorney judgment is not enough to support a claim of attorney negligence. *Id.* A claim for legal malpractice fails if the plaintiff only alleges that the attorney's negligence was due to a decision made among several reasonable courses of legal action. *Id.* An attorney's ordinary and competent decision based on reasonable legal strategy does not meet a standard of attorney negligence under New York law. *Joseph DelGreco & Co. v. DLA Piper L.L.P. (U.S.)*, 899 F. Supp. 2d 268 (S.D.N.Y. 2012), aff'd sub nom. *In re Joseph DelGreco & Co., Inc.*, 535 F. App'x 31 (2d Cir. 2013). In this case, there is no evidence that the attorney committed any actions outside of clear and competent legal decisions based on

reasonable strategy. The attorney represented the Pension Fund diligently in all 10 lawsuits, securing the claw back payments that the Pension Fund was entitled to recover. The attorney successfully represented the Pension Fund when it was sued by several individual members of the Pension Fund and protected the Pension Fund when it was sued by former investment advisor Justin Fields in his defamation suit against the Fund. Every decision that Lari & Klass LLP made was reasonable, Lari & Klass LLP was not negligent in their representation and the plaintiff's claim for legal malpractice should be dismissed. *Lok Prakashan, Ltd. v. Berman*, 349 F. App'x 640, 642 (2d Cir. 2009).

Previous claims that failed to demonstrate that the attorney was negligent, that the negligence was a proximate cause of the injury and that the client suffered actual and ascertainable damages have been dismissed under New York law. *Id.* For example, in *Rubens*, the court explained that the question of legal malpractice is whether a reasonable factfinder in the underlying suit would have arrived at a different result but for the attorney's negligence. *Rubens v. Mason*, 387 F.3d 183, 191 (2d Cir. 2004). In order to prove a legal malpractice claim, the jury had to determine whether the plaintiff's claim would have been successful, in the underlying case, had the alleged malpractice not happened. *Id.* However, because the former client failed to prove that the attorney's negligence was the proximate cause of their failure to secure the underlying products liability claim, the court held that the plaintiff's claim of legal malpractice was denied. *Id.*

Throughout the attorney's representation of the Pension Fund, there is no evidence that the attorney failed to make reasonable and competent decisions. Although several of the lawsuits were unsuccessful, that was not the result of the attorney's negligence or incompetence. (Lari Aff. ¶ 5) Further, there is simply no evidence to suggest that the Pension Fund could have

received more anymore from their legal claims. In fact, it is very likely any other recovery than that which they received would be statutorily precluded under securities and bankruptcy law. (Lari Aff. ¶ 6) Therefore, the legal malpractice claim against Lari & Klass LLP fails to meet the negligence and causation standards under New York's legal malpractice law.

III. Plaintiff's Unjust Enrichment Claim Should be Dismissed Because the Movant provided its services on a pro bono basis, receiving no compensation, thereby precluding any alleged enrichment.

Because no enrichment has been alleged, and because claims are barred due to an existing contractual relationship, Plaintiff's motion for unjust enrichment should be denied for failure to state a cognizable claim mandating relief. To present a prima facie case of unjust enrichment, a plaintiff must allege (1) defendant was enriched; (2) at plaintiff's expense; and (3) equity and good conscience militate against permitting defendant to retain what plaintiff is seeking to recover. *Diesel Props S.r.l. v. Greystone Bus. Credit II LLC*, 631 F.3d 42, 46 (2d Cir. 2011). In order for an unjust enrichment case to be successful, there must be evidence that the defendant received a specific and direct benefit, typically in the form of money or a benefit at the expense of another. *Kaye v. Grossman*, 202 F.3d 611 (2d Cir. 2000)

For example, in *Kaye*, the court found that even if there is some indirect benefit gained, the evidence must support a specific and direct benefit to the defendant. *Id.* In that case, the court found that there was insufficient evidence to support a claim that the plaintiff actually benefitted. *Id.* The court reasoned that even if the plaintiff could find some indirect benefit, the indirect benefits were not specific and direct enough to support an unjust enrichment claim for the plaintiff. *Id.* As a result, the court dismissed the case.

In this case against Lari & Klass LLP, there were no direct or indirect benefits. Lari & Klass LLP did not receive any compensation, whether monetary or otherwise for their

representation of the Pension Fund. None of the money sent from the Pension Fund went to the firm, instead they were paid to the Legal Aid Group. As a result, although the Pension Fund may have a claim for unjust enrichment based on the Bernard Madoff-related litigation, that unjust enrichment claim does not pertain to Lari & Klass LLP. The Pension Fund's claim against Lari & Klass LLP for unjust enrichment should be dismissed.

Furthermore, an unjust enrichment claim in New York is based on an obligation that the law created "in the absence of any agreement." *Goldman v. Metro. Life Ins. Co.*, 5 N.Y.3d 561, 572, 841 N.E.2d 742, 746 (2005). Under New York law, there could be no unjust enrichment if the matter is controlled by contract. *Beth Israel Med. Ctr. v. Horizon Blue Cross & Blue Shield of New Jersey, Inc.*, 448 F.3d 573, 587 (2d Cir. 2006). In *Bazak Intern*, the court dismissed the plaintiff's claim because an enforceable contract barred recovery. *Bazak Int'l Corp. v. Tarrant Apparel Grp.*, 347 F. Supp. 2d 1 (S.D.N.Y. 2004). Furthermore, the court has found that even if one of the parties to the claim is not a party to the contract, the fact that there is a valid contract which governs the subject matter of the dispute, means that the unjust enrichment claim is barred under New York law. In the New York case of *Mueller*, the defendants' motion to dismiss was granted after the court found that the existence of the agreement, even against a third party, barred the unjust enrichment claim. *Mueller v. Michael Janssen Gallery Pte. Ltd.*, 225 F. Supp. 3d 201 (S.D.N.Y. 2016)

As a result, even if Lari & Klass did receive a direct benefit, the Pension Fund's claim for unjust enrichment should be dismissed because there was a clear and undeniable contract between Lari & Klass LLP, the Legal Aid Group and the Pension Fund. Lari & Klass LLP agreed to represent the Pension Fund on behalf of the Legal Aid Group on a pro bono basis. (Lari

Aff. ¶ 4) This contract to provide legal services means that a claim for unjust enrichment is thereby precluded under New York law.

Relief Sought

Movant asks that the Court grants this motion to dismiss.

Signature Line

Applicant Details

First Name	Olivia
Middle Initial	L
Last Name	Williams
Citizenship Status	U. S. Citizen
Email Address	olwilliams@email.wm.edu
Address	<div> Address Street 4150 Battery Blvd Apt 108 City Williamsburg State/Territory Virginia Zip 23185 Country United States </div>
Contact Phone Number	2072173165

Applicant Education

BA/BS From	Husson College
Date of BA/BS	May 2019
JD/LLB From	William & Mary Law School
	http://law.wm.edu
Date of JD/LLB	May 20, 2022
Class Rank	15%
Law Review/Journal	Yes
Journal(s)	William & Mary Law Review
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	No
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Marcus, Paul
pxmarc@wm.edu
757-221-3900

Hendrickson, Erin J.
ejhendrickson@wm.edu
757-221-7457

Gershowitz, Adam M.
amgershowitz@wm.edu
757-221-7363

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Olivia Williams
4150 Battery Blvd. Apt. 108
Williamsburg, Virginia 23185
(207) 217-3165
olwilliams@email.wm.edu

June 14, 2021

The Honorable Elizabeth W. Hanes
U.S. District Court for the Eastern District of Virginia
701 East Broad St.
Richmond, Virginia 23219

Dear Judge Hanes:

I am a second-year student at William & Mary Law School writing to apply for a judicial clerkship in your chambers for the 2022-2024 term. I am ranked in the top 12% of my class and serve as a member of the *William & Mary Law Review*. I was interning with the Richmond Federal Public Defenders when you were sworn in—the attorneys I worked with spoke very highly of you and sparked my interest in clerking for you.

My academic and internship experiences have helped prepare me to serve as a judicial clerk. As a Fellow for the Legal Practice Program, I mentor 1Ls in their research and writing classes and teach proper citation. I was offered a position as a Fellow after I achieved success in my Legal Research & Writing courses, evidenced by the awards I received for achieving the highest grade in my class in two consecutive semesters. In addition to my strong academic record, I familiarized myself with federal criminal law as a 1L summer intern with the Federal Public Defenders in Richmond, Virginia. I drew upon my experiences drafting compassionate release motions and working on 18 U.S.C. § 924(c) cases when I drafted my Note, which will be published in *William & Mary Law Review Online* this upcoming year. This summer, I returned to the federal system and am presently interning with the Federal Defenders of San Diego, Inc.

Enclosed for your consideration are my resume, law school transcript, and writing sample. Three letters of recommendation, from Professors Paul Marcus, Erin Hendrickson, and Adam Gershowitz, will be sent directly to you.

Thank you for your consideration of my application. I would be grateful for the opportunity to interview and further discuss my qualifications for a judicial clerkship.

Respectfully,

Olivia Williams

OLIVIA L. WILLIAMS

4150 Battery Blvd. Apt. 108, Williamsburg, Virginia 23185
(207) 217-3165 | olwilliams@email.wm.edu

EDUCATION

William & Mary Law School, Williamsburg, Virginia

J.D. expected, May 2022

G.P.A.: 3.6; Class Rank: tied 28/230

Honors:

William & Mary Law Review

Legal Practice Fellow

CALI Awards: Legal Research & Writing I & II (highest grade in the class)

Activities:

Public Service Fund, General Board Member

Criminal Law Society, Member

Husson University, Bangor, Maine

B.S., *summa cum laude*, Criminal Justice, May 2019

G.P.A.: 4.0

Honors:

Class of 2019 Valedictorian

Excellence in the School of Legal Studies - Second and Third Year Student Awards

Activities:

School of Legal Studies, Student Ambassador

General Education Committee, Student Representative

Legal Studies Organization, Fundraising Chair

Worked 20-25 hours per week during all four years of college to help finance education.

EXPERIENCE

Federal Defenders of San Diego, Inc., San Diego, California

Incoming Legal Intern

Summer 2021

Office of the Colorado State Public Defender, Arapahoe (Centennial), Colorado

Legal Extern

January 2021 to May 2021

Assisted trial attorneys in drafting appeals, organizing discovery, completing 50-state surveys on novel legal issues, and meeting with clients. Wrote memoranda for attorneys to use in motions hearings and trial preparation. Observed court and attended new-attorney boot camp trainings.

Office of the Federal Public Defender, Eastern District of Virginia, Richmond, Virginia

Legal Intern

May 2020 to August 2020

Assisted supervising attorney in conducting research, writing memoranda, and meetings with clients. Drafted multiple habeas petitions based on recent, retroactive Supreme Court decisions. Drafted sentencing objections to guideline enhancements and compassionate release motions in response to COVID-19 and the First Step Act. Completed a trial skills class and forensics training.

PUBLICATION

Taking the Second Step: Section 924(c) Sentencing Disparities as an Extraordinary and Compelling Reason for Compassionate Release, 63 WM. & MARY L. REV. ONLINE (forthcoming 2021).

Interests include vegetarian cooking, reading, kayaking, and all things coffee.

Unofficial Transcript

Note to Employers from the Office of Career Services regarding Grade Point Averages and Class Ranks:

- Transcripts report student GPAs to the nearest hundredth. **Official GPAs are rounded to the nearest tenth and class ranks are based on GPAs rounded to the nearest tenth.** We encourage employers to use official Law School GPAs rounded to the nearest tenth when evaluating grades.
- Students are ranked initially at the conclusion of one full year of legal study. Thereafter, they are ranked only at the conclusion of the fall and spring terms. William & Mary does not have pre-determined GPA cutoffs that correspond to specific ranks.
- Ranks can vary by semester and class, depending on a variety of factors including the distribution of grades within the curve established by the Law School. Students holding a GPA of 3.6 or higher will receive a numerical rank. All ranks of 3.5 and lower will be reflected as a percentage. The majority of the class will receive a percentage rather than individual class rank. In either case, it is likely that multiple students will share the same rank. Students with a numerical rank who share the same rank with other students are notified that they share this rank. Historically, students with a rounded cumulative GPA of 3.5 and above have usually received a percentage calculation that falls in the top 1/3 of a class.
- Please also note that transcripts may not look the same from student-to-student; some individuals may have used this Law School template to provide their grades, while others may have used a version from the College's online system.

COVID-19 PANDEMIC: GRADES FOR THE SPRING 2020 TERM

In response to disruption caused by the global COVID-19 pandemic, the William & Mary Law School faculty voted to require that every course taught at the Law School during the Spring 2020 term be graded Pass/Fail. This change to Pass/Fail grading for the Spring 2020 term impacts members of our Classes of 2020, 2021, and 2022. Please note that "Pass" grades in courses graded on a Pass/Fail basis do not affect a student's GPA. As a result, class ranks for the Classes of 2020 and 2021 were not re-calculated following the Spring 2020 term, and the Class of 2022 received their initial ranking only after the Fall 2020 term.

Transcript Data	
STUDENT INFORMATION	
Name :	Olivia L. Williams
Curriculum Information	
Current Program	
Juris Doctor	
College:	School of Law
Major and Department:	Law, Law
***Transcript type:WEB is NOT Official ***	
DEGREES AWARDED	
Sought:	Juris Doctor
Degree Date:	

Curriculum Information							
Primary Degree							
College:	School of Law						
Major:	Law						
	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA	
Institution:	59.000	59.000	59.000	37.000	133.40		3.60
INSTITUTION CREDIT -Top-							
Term: Fall 2019							
Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	101	LW	Criminal Law	A-	4.000	14.80	
LAW	102	LW	Civil Procedure	B+	4.000	13.20	
LAW	107	LW	Torts	B+	4.000	13.20	
LAW	130	LW	Legal Research & Writing I	A	2.000	8.00	
LAW	131	LW	Lawyering Skills I	P	1.000	0.00	
			Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points
Current Term:			15.000	15.000	15.000	14.000	49.20
Cumulative:			15.000	15.000	15.000	14.000	49.20
Unofficial Transcript							
Term: Spring 2020							
Term Comments:	Universal Pass/Fail grading was mandated by the faculty for all Spring 2020 Law classes due to the COVID-19 pandemic. Students had no option to choose ordinary letter grades.						
Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	108	LW	Property	P	4.000	0.00	
LAW	109	LW	Constitutional Law	P	4.000	0.00	
LAW	110	LW	Contracts	P	4.000	0.00	
LAW	132	LW	Legal Research & Writing II	P	2.000	0.00	
LAW	133	LW	Lawyering Skills II	P	2.000	0.00	
			Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points
Current Term:			16.000	16.000	16.000	0.000	0.00
Cumulative:			31.000	31.000	31.000	14.000	49.20

Unofficial Transcript							
Term: Fall 2020							
Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	115	LW	Professional Responsibility	A-	2.000	7.40	
LAW	309	LW	Evidence	A-	4.000	14.80	
LAW	402	LW	Crim Pro II (Adjudication)	A-	3.000	11.10	
LAW	477	LW	Section 1983 Litigation	B+	3.000	9.90	
LAW	760	LW	Wm & Mary Law Review	P	1.000	0.00	
				Attempt Hours	Passed Hours	Earned Hours	GPA
							Quality Points
Current Term:				13.000	13.000	13.000	12.000
Cumulative:				44.000	44.000	44.000	26.000
							43.20
							3.60
Unofficial Transcript							
Term: Spring 2021							
Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	140C	LW	Adv Writing&Practice:Criminal	A	2.000	8.00	
LAW	401	LW	Crim Proc I (Investigation)	A-	3.000	11.10	
LAW	453	LW	Administrative Law	B+	3.000	9.90	
LAW	485	LW	Immigration Law	A	3.000	12.00	
LAW	700	LW	Directed Research	P	1.000	0.00	
LAW	760	LW	Wm & Mary Law Review	P	1.000	0.00	
LAW	771	LW	Public Defender Externship	P	2.000	0.00	
				Attempt Hours	Passed Hours	Earned Hours	GPA
							Quality Points
Current Term:				15.000	15.000	15.000	11.000
Cumulative:				59.000	59.000	59.000	37.000
							41.00
							3.72
Unofficial Transcript							
TRANSCRIPT TOTALS (LAW - FIRST PROFESSIONAL)							
-Top-							
				Attempt Hours	Passed Hours	Earned Hours	GPA
							Quality Points
Total Institution:				59.000	59.000	59.000	37.000
Total Transfer:				0.000	0.000	0.000	0.000
Overall:				59.000	59.000	59.000	37.000
							133.40
							3.60
Unofficial Transcript							

Paul Marcus
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June 04, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

It is my pleasure to write this letter of recommendation for Olivia Williams, second year law student at the College of William & Mary. I know Ms. Williams well and have high regard for her. I first met her in the fall of 2019 when she was a student in my large Criminal Law class. She was engaged, prepared and thoughtful in her classroom work. I then hired her to serve as one of my research assistants this past summer. While her main projects focused on assisting me with a new edition for my criminal conspiracy book, she also conducted research and prepared memoranda on other criminal justice issues. Her work was uniformly excellent. She is a good writer. She researches thoroughly.

Ms. Williams has done very well at our school both in classes and as a member of our Law Review. Her personality is upbeat; others will enjoy working with her. I recommend her to you.

Yours truly,

/s/

Paul Marcus
Haynes Professor of Law

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Erin J. Hendrickson
Professor of the Practice of Law

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June 10, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Re: Clerkship Applicant Olivia Williams

Dear Judge Hanes:

I write to enthusiastically recommend Olivia Williams for a judicial clerkship. I have had the pleasure of working closely with Olivia in two different capacities over the past two years, and she has excelled in both contexts. First, she was a standout student in my Legal Research & Writing I course during the fall semester of her 1L year. Second, based on her performance in this class, I selected her to serve as my teaching assistant, and she has similarly impressed me in this role. In short, Olivia is a professional and talented student with a strong work ethic, and I have no doubt that she would make an excellent addition to your chambers.

I taught my fall 2019 courses in an expedited manner, due to my impending parental leave. I packed 14 weeks of material into 10 weeks, adding in extra classes and assignments to make up for the lost time. Given the fast-paced nature of this class, Olivia's strong performance is all the more impressive, as it required exceptionally strong time-management and organizational skills on her part. In this class, students' grades are primarily based on one final memo assignment, but I expect them to complete many ungraded exercises and assignments throughout the semester. Unlike many of her peers, it was clear to me that Olivia always gave her full effort to each of these assignments, despite the many competing demands of 1L year. While Olivia surely has much natural talent when it comes to legal analysis and writing, she also understood that the best way to improve her skill set was to produce draft after draft. She never shied away from the opportunity to receive constructive feedback, and she was eager to implement my suggestions.

Her hard work paid off, as she easily secured the top score in her class section on our final assignment. Her submission, which objectively analyzed a potential recreational user defense, employed a clear and concise writing style, and it was especially effective in recognizing potential counterpoints to her primary lines of reasoning. While every component of Olivia's memo was exceptionally strong, the section that best exemplifies her work ethic is actually the "conclusion" section. I teach my students to write a fairly thorough conclusion section, which briefly summarizes each of the main points from the discussion above. This can, understandably, feel like a chore to students, and most of them fail to dedicate the necessary time to achieve this objective. By contrast, I was hard-pressed to provide any constructive feedback on Olivia's conclusion whatsoever. She took the time to model her conclusion after the examples I shared, and she effectively considered what information would be most useful for her (fictional) "supervisory attorney."

Based on her work product, professionalism, and engagement during class sessions, Olivia earned the only "A" grade in her class, as well as the "CALI" Award. While I did not teach Olivia's Legal Research & Writing II class, I was not at all surprised to learn that Olivia also earned the "CALI" Award for that course, despite the Law School's unexpected shift to remote learning (and a pass/fail grading system) partway through the semester. Olivia is the type of student to give every class and assignment her best effort, no matter what the circumstances.

As my teaching assistant, Olivia now serves as an invaluable resource for my 1L students. In this role, she has primary responsibility for teaching proper citation format, which has allowed her to further develop her eye for detail and her oral communication skills. My students and I highly value Olivia's collegial attitude and patience, and I also appreciate her willingness to hold students accountable and make clear the importance of meeting deadlines and engaging with the material. Olivia has met all of my expectations in this regard, despite an extremely demanding schedule, which includes serving on the

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Law Review and the Law School's Honor Council. Having Olivia as my teaching assistant makes me even more confident that Olivia has the necessary work ethic to effectively manage a demanding case load, and I also know that she would be especially effective at mentoring judicial interns while serving as a clerk.

For all of these reasons, I very much hope that you will grant Olivia the opportunity to interview for this position. Please do not hesitate to contact me if you would like to discuss her skills or qualifications further.

Sincerely,

/s/

Erin J. Hendrickson
Professor of the Practice of Law

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The College of William & Mary

Adam M. Gershowitz
Associate Dean for Academic Affair and R. Hugh
and Nolie Haynes Professor Law

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June 04, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

It gives me great pleasure to write in support of Olivia Williams's application for a clerkship in your chambers. Olivia has been an excellent student at William & Mary Law School. She is smart, thoughtful, and hard-working. I am confident she would be an excellent law clerk.

I have had the privilege to teach Olivia in two of my criminal procedure courses. In both classes, Olivia has been a strong contributor during an incredibly time (the heart of the pandemic) when many students have shut down. Not only does Olivia do an excellent job answering questions about the law as it is currently exists, but she also looks beyond what is in the textbook. Whereas other students would state the doctrinal answers and accept that "that's the way the system is," Olivia speaks up to express concern at how poorly the legal system protects the rights of the politically powerless and impoverished. Olivia clearly has not just a sharp mind, but also a strong moral compass.

Olivia's passion for justice is long-rooted. Olivia majored in criminal justice in college and is committed to becoming a public defender. She once told me that she had volunteered at a homeless shelter, a drug recovery center, and a domestic violence resource center. She explained that "marginalized people need strong advocates, and I would like to spend my life being one of them."

Olivia has put her principles into practice in Law School. She spent her 1L summer working for the Federal Public Defender's Office, while simultaneously working as a research assistant for one of the criminal law faculty at the Law School. Balancing these competing jobs takes very strong time-management skills.

In addition to being passionate about helping people, Olivia has performed extremely well in her law school courses. Let me first speak to the exam in my class last semester. (She has not taken the exam yet for my other course.) Olivia's exam answer showed not just a command of the doctrinal material we had covered during the semester, but also excellent organizational skills. Her answer was very well-written and clear. This is impressive because the exam was an extremely time-sensitive. I write the exam so that students have no extra moments to spare to look up the rules or to spend long periods of time planning out their answer. The exam calls on students to quickly assess a complicated fact-pattern, apply what they have learned, and then communicate it in a clear way. This simulates the difficult situations that lawyers often find themselves in when they have only a limited time to advise a judge or a client what the answer should be. Olivia performed very well on this task, which shows me that she (a) studied the material diligently; (b) has excellent organizational skills; (c) has strong writing abilities; and (d) can perform under pressure.

Olivia's exam performance in my course was not unusual. She has earned grades at the top end of the curve in almost every one of her classes. Most notably, she earned an A in her legal writing course. The legal writing course is a small, intensive section of 13 students, and professors are normally only allowed to award one grade of A for each section. Olivia's A in legal writing therefore means that she was the best writer in her class. Olivia's strong academic performance is very much in line with how she performed in college, where she was the class valedictorian, and graduated summa cum laude with a grade-point average of 4.0.

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Outside of the classroom, Olivia is extremely involved in the life of the law school. She is a member of the Public Service Fund (which works to raise money so that students can work in public interest fellowships in the summer) and the Criminal Law Society. Most notably, she is the Associate Chair of the Honor Council. The Honor Council is the student organization that oversees the Honor Code for the entire Law School. There is an extremely competitive process to be chosen for the Council, and an even more competitive process to be awarded one of the managing positions, such as Associate Chair. The position is important because the Council makes decisions about whether to begin proceedings against fellow students for Honor Code violations (such as plagiarism or cheating on exams). Thus, as you can imagine, students are very serious about who they elect to the Honor Council and its managing positions. Olivia's position on the Honor Council indicates that she is extremely respected by her peers.

In sum, Olivia is hard-working, extremely bright, an excellent writer, well-regarded by her classmates, and committed to public service. I enthusiastically endorse Olivia for a clerkship in your chambers. Please feel free to call or email me if I can provide any further information.

Sincerely,

/s/

Adam M. Gershowitz
Hugh and Haynes Professor of Law

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OLIVIA L. WILLIAMS

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WRITING SAMPLE

I prepared this brief during my summer internship with the Federal Public Defender Office in Richmond, Virginia, and have obtained the employer's consent to use it as a writing sample. Parties and locations have been changed to protect their identities and privacy. This brief is substantially my own work and has not been edited by others.

SENTENCING OBJECTION TO PRESENTENCE REPORT

John Doe, through counsel, objects to the two-level enhancement to the base level offense that the presentence report (“PSR”) has applied under United States Sentencing Guidelines (“U.S.S.G”) § 2D1.1(b)(1) for possession of a firearm. Additionally, Mr. Doe asks the Court to apply a two-level reduction under U.S.S.G. § 2D1.1(b)(18), which allows for the reduction if Mr. Doe meets the criteria laid out in the U.S.S.G § 5C1.2 safety valve exception. The only contested safety valve subsection, § 5C1.2(a)(2), also relates to the possession of a firearm in connection with the principal offense. The firearm upon which § 2D1.1(b)(1) enhancement was based, however, was Mr. Doe's brother's legally owned firearm that he accidentally left behind only a few days before a search warrant was executed at Mr. Doe's residence. Further, there is no evidence Mr. Doe's brother's firearm was in any way connected to the drug offenses Mr. Doe pled guilty to. After removing the two-level enhancement applied in the PSR and applying the two-level safety valve reduction, Mr. Doe's total offense level would shift from 21 to 17, which in a criminal history category of I provides a sentencing guidelines range of 24-30 months.

I. Discussion of Facts Related to the § 2D1.1(b)(1) Enhancement

On Friday, April XX, 20XX, a City Police Officer applied for and obtained a search warrant for Mr. Doe’s (and others) residence at the address. *See* PSR 5. That weekend, Mr. Doe’s brother, an active-duty member of the United States Navy, arrived in City to visit Mr. Doe and attend a family get-together. Mr. Doe's brother first met with Mr. Doe at the address, where Mr. Doe and others were staying. Before heading to the family gathering, Mr. Doe’s brother stored his Ruger semi-automatic pistol—which he legally purchased a year prior—in Mr. Doe’s bedroom closet because he did not want to carry it around during the get-together. After the get-

together, Mr. Doe's brother forgot to retrieve the gun. Just a few days later, on May XX, 20XX, the search warrant obtained before Mr. Doe's brother's visit was executed at the address, where authorities seized evidence of drug trafficking from Mr. Doe's bedroom. Additionally, authorities seized Mr. Doe's brother's firearm, which was sitting on clothing on top of a blue bin, behind a black hamper, directly next to Mr. Doe's bedroom closet. Mr. Doe was subsequently charged with and pled guilty to two counts of possession with intent to distribute controlled substances, and a two-level enhancement for possessing a firearm in connection to the drug offenses was applied in his PSR. The PSR also failed to apply a two-level reduction under § 2D1.1(b)(18).

II. Objection to Two-Level Enhancement for Possession of a Firearm under U.S.S.G. § 2D1.1(b)(1)

Mr. Doe did not actually or constructively possess his brother's firearm in connection with drug offenses. In fact, a nexus between the firearm and Mr. Doe's drug offenses is clearly improbable. Thus, the two-level enhancement for possession of a firearm under U.S.S.G. § 2D1.1(b)(1) should not be applied to Mr. Doe's base level offense.

The burden rests on the government to prove by a preponderance of the evidence that Mr. Doe not only possessed the firearm but also that the "weapon was possessed in connection with drug activity that was part of the same course of conduct or common scheme as the offense of conviction." *United States v. Manigan*, 592 F.3d 621, 628-29 (4th Cir. 2010) (citing *United States v. McAllister*, 272 F.3d 228, 233-34 (4th Cir. 2001)). Further, "[u]nless the defendant's words or actions explained the weapon's role" the nexus between the weapon and offense must be "temporal and spatial." *Id.* at 633 (Michael, J. concurring in part). Should the government prove possession, Mr. Doe need only show that the connection between the firearm and offense

is “clearly improbable.” See U.S.S.G. § 2D1.1 cmt. n. 11; *United States v. Bolton*, 848 F.3d 905, 912 (4th Cir. 2017).

Because there is no evidence Mr. Doe ever handled the gun, or had it on his person, or was seen with the gun, constructive rather than actual possession is more relevant here. To prove constructive possession, the government must prove that the defendant “can knowingly control [the firearm] and intends to control [the firearm].” *United States v. Herder*, 594 F.3d 352, 360 (4th Cir. 2010). Further, the government “must produce evidence showing ownership, dominion, or control over the [firearm] itself or the premises . . . in which the [firearm] is concealed.” *United States v. Blue*, 957 F.2d 106, 107 (4th Cir. 1992). The mere proximity of a weapon to the defendant is not enough to establish constructive possession, because it “goes only to its accessibility, not to the dominion or control which must be proved to establish possession.” *Id.* at 108 (citing *United States v. Soto*, 779 F.2d 558, 560 (9th Cir. 1986)).

In *United States v. Manigan*, the Fourth Circuit made clear that the § 2D1.1(b)(1) enhancement should only be applied if the government proves a nexus existing between the constructive possession of a firearm and drug activity. 592 F.3d at 629-30. In that case, the defendant admitted that he owned the two handguns found in the house he was dealing from. *Id.* at 625. That evidence, the Fourth Circuit found, was sufficient to apply the enhancement in § 2D1.1(b)(1). *Id.*

In *United States v. Blue*, in a case that makes clear that mere proximity to a gun does not prove possession, the government attempted to prove that the defendant constructively possessed a firearm found under the defendant’s car seat. *Id.* In rejecting that argument, the Fourth Circuit noted the lack of evidence produced showing that the defendant had ownership, dominion, or control of the firearm. *Id.* at 108. The government had not produced any fingerprints or physical

evidence that the defendant handled the gun nor any evidence demonstrating the defendant owned the gun or had been seen with it. *Id.*

The evidence of Mr. Doe constructively possessing his brother's gun is even more scarce here. There is no evidence of Mr. Doe showing ownership, dominion, or control of the firearm; in fact, the evidence directly contradicts those elements. It is undisputed that, unlike the defendant in *Manigan*, Mr. Doe does not own the firearm in question. Both parties stipulated that the firearm belongs to Mr. Doe's active-duty military brother, who accidentally left the gun in Mr. Doe's bedroom closet. Only three to four days later was the search warrant executed, and Mr. Doe's brother's gun was found on a blue tote on top of clothes, behind a black hamper, directly next to the open closet door. There is no evidence of how the gun was transferred from the closet to the tote right next to it. There is no evidence Mr. Doe ever touched the gun. There is no evidence anyone saw the gun or Mr. Doe carrying it.

The evidence of the connection between the gun and Mr. Doe's drug offenses is simply nonexistent; so nonexistent, in fact, that it is *clearly improbable* that the firearm was connected to the offenses at all. Mr. Doe did not own the gun. The gun was only in Mr. Doe's bedroom for three to four days. There is no evidence that Doe was trafficking drugs in those three to four days, in fact, the search warrant obtained before Mr. Doe's brother visited was obtained based on evidence of drug trafficking *before* any gun was present in the home. There is no evidence that Doe ever trafficked drugs from his bedroom. There is no evidence anyone saw Doe with the gun. The gun was not clearly visible to anyone who could have walked into Doe's room. The gun, although located in the same room as drugs, was not kept in a nightstand or drawer with the drugs.

The only evidence the government relies on is that Mr. Doe's brother's firearm was moved at some point from the closet to the tote next to the closet, and thus Mr. Doe must have exerted control over the firearm for a couple of seconds to move it. The government stretches the point further to assume a connection between the firearm and drugs because the two existed in the same room at the same time. The government produces no evidence, however, that Mr. Doe moved or touched the firearm, or was even aware it had moved. He did not live alone in the house and was not the only person with access to the gun. To apply a two-level enhancement and reject a two-level reduction based on such minute evidence—showing a small, less than likely, clearly improbable chance that Mr. Doe's brother's weapon, left in a bedroom for three to four days and moved from one spot to another by someone, was connected to drug trafficking—could increase Mr. Doe's sentence upwards of twenty-two months. “[G]iving sentencing courts what appears to be a green light to apply the § 2D1.1(b)(1) enhancement to every drug dealer with a handgun in his residence will practically eliminate any limitation on the scope of the provision.” *Manigan*, 592 F.3d at 635 (Michael, J., concurring in part).

The unsubstantiated assumption that Mr. Doe exerted control over his brother's firearm and that its presence was connected to drug offenses is clearly improbable. Indeed, not only is it clearly improbable, but it is more likely than not that the weapon had no connection to Mr. Doe's drug offenses. The government failed to meet its burden.

III. Request to Apply the Two-Level Safety Valve Reduction under U.S.S.G. § 5C1.2(a)(2) as Incorporated in U.S.S.G. § 2D1.1(b)(18)

In addition to removing the two-level enhancement under § 2D1.1(b)(1), a two-level reduction under U.S.S.G. § 2D1.1(b)(18) should be applied to Mr. Doe's base offense level. Section 2D1.1(b)(18) allows for a two-level reduction should the defendant meet the five criteria laid out in the safety valve exception under U.S.S.G. § 5C1.2(a)(1)–(5). Four of the five criteria

are undisputed: Mr. Doe has no criminal history, his offense did not result in any injuries, he was not an organizer or leader of others in the offense, and he truthfully provided the government with all information regarding his offenses. Thus, the only disputed factor is under § 5C1.2(a)(2), which requires that the defendant did not possess a firearm in connection with the offense. Because Mr. Doe did not possess his brother's firearm, and because the presence of the firearm was not connected to the offense, the two-level reduction should be applied.

Although the two-level enhancement under § 2D1.1(b)(1) and the two-level reduction under § 5C1.2(a)(2) both relate to the possession of a firearm in connection with the principal offense, the two have different standards. To receive a safety valve reduction, Mr. Doe must only show that he did not possess his brother's firearm in connection with his drug offenses by a preponderance of the evidence, rather than showing that it is "clearly improbable" as required under §2D1.1(b)(1). "Whereas a defendant may be unable to show that any connection between a firearm and an offense is 'clearly improbable,' the same defendant might be able to prove 'by a preponderance of the evidence' that the firearm was not connected with the offense to satisfy § 5C1.2(a)(2)." *United States v. Bolton*, 858 F.3d 905, 914 (4th Cir. 2017). Thus, a "weapon enhancement pursuant to § 2D1.1(b)(1) does not foreclose a safety valve reduction despite § 5C1.2(a)(2)'s requirement that a defendant seeking the reduction did not possess a firearm in connection with the offense." *Id.*; see also *United States v. Carillo-Ayala*, 713 F.3d 82, 91 (11th Cir. 2013); *United States v. Anderson*, 452 F.3d 87, 90 (1st Cir. 2013); *United States v. Zavalza-Rodriguez*, 379 F.3d 1182, 1188 (10th Cir. 2004); *United States v. Bolka*, 355 F.3d 909, 914 (6th Cir. 2004); *United States v. Nelson*, 222 F.3d 545, 549-51 (9th Cir. 2000).

For the reasons laid out above, Mr. Doe proved by a preponderance of the evidence that he did not possess his brother's weapon in connection to his drug offenses. He did not own the

gun. The gun was only present for three to four days. There is no evidence the gun ever left Mr. Doe's bedroom. There is no evidence Mr. Doe ever touched the gun. Should the Court make a factual finding that Mr. Doe moved the weapon from the closet to the bin next to the closet, it is still unlikely that the weapon was possessed in connection to drug trafficking. *See United States v. Beverly*, 750 F.2d 34, 36-37 (6th Cir. 1984) (holding that constructive possession was not proven by evidence that defendant was standing close to a wastebasket which contained two guns, one of which contained defendant's fingerprint). In fact, in light of the totality of the circumstances and lack of evidence, it is *clearly improbable* that the gun was (1) possessed by Mr. Doe, and (2) connected to illegal activity. Even in viewing every fact at its worst, it is *still* more likely than not that the gun had no nexus to drugs, even in the three to four days it sat in Mr. Doe's room.

CONCLUSION

For these reasons, Mr. Doe asks the Court to remove the two-level enhancement to the base offense level under United States Sentencing Guidelines ("U.S.S.G") § 2D1.1(b)(1) for possessing a firearm in connection to Mr. Doe's drug offenses and apply a two-level reduction under U.S.S.G. § 5C1.2 as incorporated in U.S.S.G. § 2D1.1(b)(18). Mr. Doe's total offense level is 21 as listed in the PSR. After the four-level reduction, the total offense level would be 17, which in criminal history category I provides a sentencing guidelines range of 24-30 months.

Respectfully submitted,
JOHN DOE

Applicant Details

First Name **Michael**
 Middle Initial **J.**
 Last Name **Wozniak**
 Citizenship Status **U. S. Citizen**
 Email Address michael.wozniak@brooklaw.edu

Address
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Contact Phone
 Number **5706066555**

Applicant Education

BA/BS From **Wilkes University**
 Date of BA/BS **May 2018**
 JD/LLB From **Brooklyn Law School**
http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=23302&yr=2009
 Date of JD/LLB **June 1, 2022**
 Class Rank **10%**
 Law Review/
 Journal **Yes**
 Journal(s) **Brooklyn Law Review**
 Moot Court
 Experience **No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Driscoll, Timothy
driscollts@yahoo.com
516-314-9603
Araiza, Bill
bill.araiza@brooklaw.edu
(718) 780-7955

References

United States Court of Appeals Judge Patty Shwartz
(chambers_of_judge_patty_shwartz@ca3.uscourts.gov or
973-645-6596); Glenn Singer (singer@brooklynda.org or
917-992-6737)

This applicant has certified that all data entered in this profile and any application documents are true and correct.

MICHAEL J. WOZNIAK

205 State Street, Apt. 4T, Brooklyn, NY 11201
michael.wozniak@brooklaw.edu | (570) 606-6555

April 7, 2022

The Honorable Elizabeth W. Hanes
United States Magistrate Judge
United States District Court for the Eastern District of Virginia
Spottswood W. Robinson III and Robert R. Merhige, Jr., Federal Courthouse
701 East Broad Street
Richmond, VA 23219

Dear Judge Hanes:

I am a third-year law student at Brooklyn Law School, and I am writing to seek a clerkship in your Chambers for the 2022-2023 Term. As a first-generation lawyer from rural Pennsylvania, I will bring a diverse perspective to your Chambers.

At Brooklyn Law School, I have deployed and expanded my analytical skillset in a way that will enhance your Chambers' team. While ranking in the top 6.7% of the third-year class, I have refined my editing, research, and writing skills by serving as an Associate Managing Editor for the *Brooklyn Law Review* and by assisting professors with research addressing civil procedure, constitutional law, and administrative law issues. As I continued to hone those skills by excelling in upper-level writing courses, I also laid a strong foundation for case management by meeting demanding deadlines in the Prosecutor's Clinic at the Kings County District Attorney's Office.

Additionally, my judicial internships at the federal circuit court and district court levels immersed me in the collaborative and independent aspects of clerking. As such, I employed balanced judgment as I authored documents that analyzed complex legal questions, including memoranda recommending the appropriate disposition for rehearing petitions and a draft opinion addressing a motion for summary judgment on a claim under 42 U.S.C. § 1983. Both positions instilled senses of responsibility and ownership that will allow me to handle the challenges presented by your Chambers' fast-paced docket of civil and criminal cases.

I have enclosed my resume, law school transcript, and writing sample. Further, United States Court of Appeals Judge Patty Shwartz (chambers_of_judge_patty_shwartz@ca3.uscourts.gov or 973-645-6596) and my supervisor in the Prosecutor's Clinic, Glenn Singer (singer@brooklynda.org or 917-992-6737), have agreed to serve as references. Thank you for your consideration.

Respectfully,

Michael J. Wozniak

MICHAEL J. WOZNIAK

205 State Street, Apt. 4T, Brooklyn, NY 11201
 michael.wozniak@brooklaw.edu | (570) 606-6555

Education

BROOKLYN LAW SCHOOL, Brooklyn, NY

Juris Doctor Candidate, Certificate in Criminal Law, May 2022

- Honors:* Top 6.7% (3.875 GPA)
Brooklyn Law Review, Associate Managing Editor (Vol. 87), Staff Editor (Vol. 86)
 Dean's List 2019-20, Dean's List 2020-21
- Note:* When Asking for Permission is Better Than Begging for Forgiveness: Why Congress Should Amend 18 U.S.C. § 1028A to Allow Identity Holder Consent as a Defense to Aggravated Identity Theft
- Awards:* Richardson Merit Scholarship, Howard '71 and Joan Rothman Scholarship
- Activities:* Research Assistant to Professors Robin Effron (Civil Procedure) and William Araiza (Administrative Law/Constitutional Law), Phi Delta Phi Honor Society

WILKES UNIVERSITY, Wilkes-Barre, PA

Bachelor of Arts in English Literature, *magna cum laude*, May 2018

- Honors:* Dean's List, Kappa Delta Pi Honor Society
- Awards:* Pennsylvania Association of School Retirees Scholarship, Robert Heaman Endowed Scholarship
- Activities:* NCAA Varsity Baseball, Tutor for visiting English as a Second Language students

Legal Experience

KLINE & SPECTER, P.C., Philadelphia, PA

Law Clerk, October 2021 – Present

Summer Law Clerk, May 2021 – August 2021 (Associate offer extended); May 2020 – August 2020

Drafted successful opposition to motion to transfer venue based on pre-trial publicity. Prepared motions to compel, motions *in limine*, and responses to motions for summary judgment. Constructed complaints for tort cases ranging from wrongful termination to child sex abuse. Researched civil litigation issues, including scope of cross-examination of party-witness and pandemic-related insurance contract interpretation.

KINGS COUNTY DISTRICT ATTORNEY'S OFFICE, Brooklyn, NY

Student Assistant District Attorney, September 2021 – Present

Advocated before the court during calendar calls. Drafted and responded to discovery motions. Presented research on "plain view" seizure and "ghost gun" operability requirements. Organized case files for hearings and trials.

HON. VALERIE E. CAPRONI, U.S. DISTRICT COURT, S.D.N.Y., New York, NY

Judicial Intern, January 2021 – April 2021

Authored draft opinion on motion for summary judgment in 42 U.S.C. § 1983 case. Wrote memoranda addressing Freedom of Information Act exemptions and re-arraignment under Federal Rules of Criminal Procedure.

HON. PATTY SHWARTZ, U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT, Newark, NJ

Judicial Intern, August 2020 – January 2021

Created squibs for rehearing petitions in civil, criminal, and administrative appeals. Researched questions of law ranging from employment law to insurance contract construction to constitutionality of punitive damage awards.

SUFFOLK COUNTY DISTRICT ATTORNEY'S OFFICE, Hauppauge, NY

Remote Summer Intern, June 2020 – August 2020

Observed virtual arraignments and presentations by assistant district attorneys regarding criminal law and procedure.

FELLERMAN & CIARIMBOLI LAW, P.C., Kingston, PA

Intake and Discovery Coordinator, April 2017 – July 2019

Drafted discovery requests and responses. Interviewed potential clients to screen personal injury matters. Created visual presentations for settlement negotiations and trials.

Interests

Reading postmodern American literature. Watching Great British Baking Show. Attending professional sports events.

Print Date: 02/14/22

Page: 1 of 2

Mr. Michael J. Wozniak
205 State Street, Apt. 4T1
Brooklyn NY 11201

Student Name: Michael J. Wozniak
Student ID.: 0417008
Class: 3F

				Cred		Grad	GPA	Faculty
Courses				Att	Grd	Crs	Calc	
Fall 2019								
CRM 100	D3S Criminal Law			4.00	A-	4.00	14.68	A. Kolber
CPL 102	D5 Civil Procedure			4.00	A	4.00	16.00	J. Ressler
TRT 100	D5 Torts			4.00	A	4.00	16.00	E. Janger
LWR 100	D14A Legal Research & Writing			3.00	B+	3.00	9.99	C. Teitcher
Sem GPA	3.778	Cum GPA	3.778	15.00		15.00	56.67	
Spring 2020								
CLT 100	D2 Constitutional Law			4.00	P	4.00	0.00	J. Gora
CTL 100	D4 Contracts			4.00	P	4.00	0.00	J. Arato
PTE 100	D4 Property			4.00	P	4.00	0.00	D. Brakman Reiser
LWR 101	D14A Gateway: Law & Information			4.00	P	4.00	0.00	C. Teitcher
Sem GPA	0.000	Cum GPA	3.778	16.00		16.00	0.00	
Fall 2020								
CPL 200	D1 Evidence			4.00	A	4.00	16.00	J. Macleod
CRM 305	E1 New York Crim Pro Wkshp			2.00	A	2.00	8.00	B. Kamins
BOL 200	D1 Corporations			4.00	A	4.00	16.00	J. Fanto
LWR 320	D1 Brooklyn Law Review			2.00	P #	2.00	0.00	B. Jones-Woodin
Sem GPA	4.000	Cum GPA	3.867	12.00		12.00	40.00	
Spring 2021								
CPL 360	E2 Trial Advocacy			2.00	A	2.00	8.00	R. Paul
CRM 200	D1.1Crim. Pro.: Investigations			3.00	B+	3.00	9.99	A. Ristroph

LWR	320	D1	Brooklyn Law Review	1.00	P	1.00	0.00	B. Jones-Woodin
CLT	205	D1.1	Fed.Cts.& the Fed.Sys.	3.00	A	3.00	12.00	M. Fullerton
CRM	225	E1	Federal Criminal Investigatio	2.00	A	2.00	8.00	N. Ross
CLN	206	D1	Judicial Externship Fieldwork	3.00	HP SK	3.00	0.00	J. Balsam
CLN	207	D2	Judicial Externship Seminar	1.00	A	1.00	4.00	E. Stong
				15.00		15.00	41.99	
Sem GPA	3.817	Cum GPA	3.852					

NEXT PAGE...

Credits Attempted: 74 Credits Completed: 74 Credits toward GPA: 48 GPA Grade Points: 186
 GPA: 3.875
 Comments: @ indicates successfully completed UCWR. # indicates successfully completed AWR. SK indicates
 successfully
 completed Skills Requirement. Dean's List 2019 - 2020, Dean's List 2020 - 2021 END OF COMMENTS

Page: 2 of 2

Print Date: 02/14/22

Mr. Michael J. Wozniak
 205 State Street, Apt. 4T1
 Brooklyn NY 11201

Student Name: Michael J. Wozniak
 Student ID.: 0417008
 Class: 3F

				Cred		Grad	GPA		Faculty
Courses				Att	Grd		Crs	Calc	
Fall 2021									
LWR	230	E2	Fundamentals of Legal Draftin	2.00	A	@	2.00	8.00	T. Driscoll
CPL	325	E1	Discovery Workshop	2.00	P	@	2.00	0.00	T. Driscoll
LGE	120	D1	Professional Responsibility	2.00	A-		2.00	7.34	C. Carrion
CLN	316	D1	Clinic - Prosecutors: Brookly	3.00	A	SK	3.00	12.00	G. Singer
CLN	317	D1	Clinic - Prosecutors Sem.	2.00	A		2.00	8.00	G. Singer

PTE	201	D1	Trusts & Estates	3.00	A	3.00	12.00	C. Mulligan
LWR	320	D1	Brooklyn Law Review	1.00	P	1.00	0.00	B. Jones-Woodin

Sem GPA	3.945	Cum GPA	3.875	15.00	15.00	47.34
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Winter 2022

CPL	217	D1	Intensive Comm. Skills -Remot	1.00	P	1.00	0.00	N. Cohen
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Sem GPA	0.000	Cum GPA	3.875	1.00	1.00	0.00
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END OF THIS TRANSCRIPT

Credits Attempted: 74 Credits Completed: 74 Credits toward GPA: 48 GPA Grade Points: 186
GPA: 3.875

Comments: @ indicates successfully completed UCWR. # indicates successfully completed AWR. SK indicates successfully completed Skills Requirement. Dean's List 2019 - 2020, Dean's List 2020 - 2021 END OF COMMENTS



**CHAMBERS OF THE SUPREME COURT
COUNTY OF NASSAU
100 SUPREME COURT DRIVE
MINEOLA, NEW YORK 11501**

**HON. TIMOTHY S. DRISCOLL
SUPREME COURT JUSTICE**

**(516) 493-3184
FAX: (516) 493-3380**

PERSONAL AND UNOFFICIAL

March 8, 2022

Dear Judge:

I write this letter at the request of Michael Wozniak, who has applied for a clerkship in your chambers. Mr. Wozniak was my student in two courses in the Fall 2021 semester: Fundamentals of Legal Drafting, an upper level legal writing course, and Discovery Workshop, which requires detailed analysis and written work concerning Federal and State rules regarding discovery.

Mr. Wozniak is among the top five (5) students I have taught in my twenty-four years at Brooklyn Law School. He is diligent, hard-working and detail-oriented. He deservedly earned among the highest grades in the class on each assignment in each course. These assignments were complex and varied, including a Complaint, Interrogatories and Requests for Production of Documents, Motion for Summary Judgment, Motion for Protective Order, and Contract. He has strong legal writing and research skills, and an excellent work ethic. He took direction quite well, and also demonstrated an ability to independently analyze complicated legal issues. Moreover, he worked quite well with his fellow classmates, and indeed was always kind and gracious to his classmates and to me throughout the semester.

In sum, Mr. Wozniak performed quite capably in my class. Please contact me if I can be of further assistance.

Sincerely yours,

A handwritten signature in blue ink, reading "Timothy S. Driscoll". The signature is written in a cursive style with a large, stylized "T" and "D".

Timothy S. Driscoll
Adjunct Professor
Brooklyn Law School

April 12, 2022

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am delighted to give a hearty endorsement to Michael Wozniak's application to clerk in your chambers. Michael is smart, focused, and a hard worker who has performed very well at Brooklyn. He would be a wonderful clerk. I urge you to consider interviewing Michael so you can take your own measure of him.

I first met Michael when he applied for a research assistant position last summer. At that point, I had a variety of pending projects, from manuscripts that needed proofing to upcoming conference presentations and articles that required basic legal research. I was very pleased that I selected Michael to be one of my RAs. Michael did an excellent job on all the tasks I assigned him. His proofreading was very careful, but also smart, in that he pointed out word choice and usage issues I otherwise would have missed. The items he proofread—including a new edition of a casebook and an academic book—were markedly better because of his work.

I also gave Michael more traditional legal research work. One of my research interests is the Supreme Court's "animus" doctrine, as reflected in foundational cases such as *Department of Agriculture v. Moreno* (1973) and *City of Cleburne v. Cleburne Living Center* (1985). After the Court revived the animus idea in the 2020 DACA rescission case, *Department of Homeland Security v. Regents of the University of California*, I asked Michael to research how lower courts had reacted to that decision, and in particular to the Court's provision of a doctrinal roadmap for such animus claims. Michael did a great job, writing a comprehensive memo providing me the information I needed to continue my research.

Michael's performance as an RA doesn't surprise me, in light of his record more generally. As his CV shows, he has burned up the track at Brooklyn and occupies a high position on our flagship law review, all while satisfying the requirements for a criminal law certificate in addition to his anticipated JD. This record reflects Michael's work ethic—something I can attest to in light of my experience with him.

Because of the COVID-19 pandemic, I have not had the sort of face-to-face interaction with Michael that I would normally have with an RA. But I have had Zoom meetings with him; during those encounters he's been professional, friendly, and deferential while still (gently) pushing me in order to learn more. I suspect he would be a wonderful clerk to mentor and teach. I'm very confident he would be both an effective clerk and a valued and liked member of your chambers.

Michael has told me that he wants to clerk in order to hone his legal skills and increase his legal knowledge. Indeed, from the very first time I met him (virtually), when he was interviewing for an RA position, he spoke about his interest in clerking. His interest is longstanding and deep. I suspect he would recognize a clerkship opportunity for what, in my experience, it is: a rare chance to hone one's legal skills and benefit from a judge's mentoring. I'm confident Michael would make the very most of that opportunity. In so doing, he would provide a great deal of assistance to his judge.

As you can probably tell, I'm very high on Michael. At the same time, I recognize that the judge-clerk relationship is an intensely personal one, and that you might wish to interview any serious candidates so you can take your own measure of them. I urge you to consider including Michael in the list of applicants you decide to interview. I can assure you it would not be wasted time.

Don't hesitate to contact me if I can provide you any more information about Michael.

Sincerely,

William D. Araiza
Stanley A. August Professor of Law

Bill Araiza - bill.araiza@brooklaw.edu - (718) 780-7955

MICHAEL J. WOZNIAK
205 State Street, Apt. 4T, Brooklyn, NY 11201
michael.wozniak@brooklaw.edu | (570) 606-6555

Writing Sample

As a Student Assistant District Attorney at the Kings County District Attorney's Office during the Spring 2022 semester, I drafted this memorandum of law opposing a defendant's motion challenging the prosecution's initial certificate of compliance with discovery requirements and seeking dismissal of the charges, including driving while intoxicated.

All names and other identifying information have been changed to preserve anonymity. It is my original work, and it has not been edited by anyone else. I have received permission from the Office to use this draft as a writing sample.

CRIMINAL COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART DWI

THE PEOPLE OF THE STATE OF NEW YORK,

v.

Docket No. 21-12345

WILLIAM JOHNSON,

Defendant.

**THE PEOPLE OF THE STATE OF NEW YORK’S MEMORANDUM OF LAW IN
OPPOSITION TO DEFENDANT WILLIAM JOHNSON’S CERTIFICATE OF
COMPLIANCE CHALLENGE**

The People of the State of New York, by and through the counsel below, submit this Memorandum of Law opposing Defendant William Johnson’s Motion to Dismiss Pursuant to C.P.L. §§ 30.30 & 210.20(1)(G), and Challenging COC Under C.P.L. § 245.50(4), and aver as follows:

PRELIMINARY STATEMENT

An unsuccessful litigant may not modify the applicable procedural rules based on a disagreement with the court’s prior ruling. But Defendant tries to do so here with no legal or factual support. One member of the court already validated the People’s certificate of compliance 84 days before Defendant moved Your Honor to invalidate it. Defendant now repeats his rejected arguments. Thus, the Court should deny this motion.

Here, Defendant failed to follow the rules for seeking leave to reargue, and each procedural lapse independently warrants denial of his motion. First, he has not done so before the proper member of the court—the judge who validated the initial certificate of compliance. He also filed his motion 54 days past the appropriate deadline. Nor did he correctly identify his

motion as seeking leave to reargue. Even if Defendant complied with these rules, he did not satisfy his burden to identify a law or fact that the court misapprehended or overlooked. Indeed, granting this motion would contravene principles of judicial economy by allowing unsuccessful litigants to ask a judge of equal rank for a re-do upon receiving an adverse ruling. Accordingly, denying Defendant a “second bite at the apple” both falls within the Court’s discretion and aligns with decisions from other courts across the State of New York.

FACTUAL AND PROCEDURAL BACKGROUND

This case commenced when the People filed an accusatory instrument in the Criminal Court of the City of New York in Kings County on July 4, 2021. That instrument mainly charged Defendant with Operating a Motor Vehicle While Under the Influence of Alcohol in violation of Vehicle and Traffic Law § 1192(2). Later that evening, the court arraigned Defendant.

During the resulting prosecution, the People produced discovery materials to Defendant’s counsel. Upon doing so, they filed a certificate of compliance under Criminal Procedure Law 245.20 with the court, and they served the same on defense counsel.

Nearly two months later, on October 21, 2021, Defendant’s counsel challenged the certificate by asserting that the People failed to produce discoverable items, specifically the New York City Police Department Motor Collision Worksheet and six photographs of damage to the vehicles involved in the collision. Three days later, on October 24, 2021, the parties filed a Joint Letter with the court detailing their discovery dispute. The next day, they appeared before the Honorable Adam B. Peterson in Part DWI. At that time, Judge Peterson ruled that the People’s certificate of compliance was valid regardless of the disputed items. Defendant concedes this. *See* Def.’s Mot. ¶ 6 (“On October 25, 2021, during an appearance in Part DWI, Judge Adam Peterson deemed the people’s September 1, 2021 CoC to be valid.”). The day after that, on

October 26, 2021, the People filed a supplemental certificate of compliance that contained both the Motor Collision Worksheet and the six photographs. During the intervening 84-day period between Judge Peterson’s above-mentioned ruling and Defendant’s filing of this motion, Judge Peterson presided over this case.

Now, on January 17, 2022, Defendant again challenges the People’s initial certificate of compliance and seeks dismissal of the pending charges. *See* Def.’s Mot. ¶ 1 (seeking an order “[d]eeming the prosecution’s certificate of compliance (COC), filed September 1, 2021, to be improper under C.P.L. § 245.20(1) because certain materials discoverable under C.P.L. § 245.20(1) were not disclosed and made available to the defense” and “dismissing the accusatory instrument”). Even though the court’s docket reveals that Judge Peterson still presides over this case, Defendant requests this relief from Your Honor.

QUESTION PRESENTED

Question: Under New York law, should the Court deny Defendant’s challenge to the People’s certificate of compliance when it reargues the same facts 84 days after another member of the court denied his first motion?

Suggested Answer: Yes. The Court should deny Defendant’s challenge on multiple grounds: (1) Your Honor, as a member of the court equal to Judge Peterson in rank, lacks jurisdiction to overrule his earlier decision. (2) Defendant’s motion suffers from multiple procedural defects, including untimeliness and failure to properly label the motion.

LEGAL STANDARD

Without a Criminal Procedure Law (“CPL”) provision governing leave to reargue, courts presiding over criminal cases evaluate such motions under Civil Practice Law & Rule (“CPLR”) 2221. *People v. Merly*, 51 Misc. 3d 858, 859 (Sup. Ct. Bronx Cnty. 2016). The decision to grant

leave to reargue rests within the trial court's discretion. *Id.* at 860. But such a motion does not serve as a "do-over." *See Mangine v. Keller*, 581 N.Y.S.2d 793, 795 (1st Dep't 1992) ("Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided.").

A motion for leave to reargue has several requirements. *See generally* CPLR 2221. First, the movant must seek such relief before the member of the court whose interpretation of the law he challenges. CPLR 2221(a). Then, the movant shall specifically identify his motion for leave to reargue as such. CPLR 2221(d)(1). After that, the movant bears the burden of identifying facts or law misapprehended or overlooked by the court's prior ruling. CPLR 2221(d)(2). Finally, the movant must seek leave to reargue within thirty days after service of a copy of the order determining the prior motion and written notice of its entry. CPLR 2221(d)(3); *see also Merly*, 51 Misc. 3d at 860 (ruling that, in a criminal case, the time limitation in CPLR 2221(d)(3) begins on the date the court communicates its decision to the parties).

LEGAL ARGUMENT

A. THE COURT SHOULD DENY DEFENDANT'S MOTION BECAUSE HE FILED IT BEFORE THE INCORRECT MEMBER OF THE COURT UNDER CPLR 2221 (a).

Because Judge Peterson validated the People's certificate of compliance, he is the proper member of the court to decide this motion. When a party seeks to convince a member of the court that his interpretation of the law was incorrect, the movant must do so before the first presiding member of the court. CPLR 2221(a); *see also Gino v. Gino*, 105 N.Y.S.2d 333, 336 (N.Y. Dom. Rel. Ct. 1951) ("[N]o Judge of coordinate jurisdiction has the power to reverse an order made by a colleague of equal rank."). The rules contain an exception when the ruling member of the court "is for any reason unable to hear [the motion for leave to reargue]." CPLR

2221(a). But Defendant has not shown that this exception applies. Instead, he improperly asks Your Honor to reverse a colleague of equal rank.

New York courts have long declined to exercise their jurisdiction to review decisions rendered by members of the same court. *People v. Solomon*, 91 Misc. 2d 760, 768 (Crim. Ct. N.Y. Cnty. 1977). In *Solomon*, the defendant sought to challenge the court's prior determination of reasonable cause by moving for leave to reargue before a second judge. *Id.* at 761. The court declined to exercise its jurisdiction over the motion for leave to reargue and distinguished situations where new matter is presented to judges in the regular course of their duties, such as bail applications. *Id.* at 766. The court further reasoned that "it was the first judge's prerogative to decide whether reargument should be allowed." *Id.* (citing *People v. Tartt*, 71 Misc. 2d 955, 958 (Sup. Ct. Erie Cnty. 1972) (declining to suppress certain physical evidence because suppression was foreclosed by the earlier decision of a member of the court)).

Here, the Court should stand by New York's longstanding policy and decline to exercise its jurisdiction over Defendant's motion. The docket reflects that Judge Peterson continues to preside over this case. Defendant even acknowledges Judge Peterson's ruling: "On October 25, 2021, during an appearance in Part DWI, Judge Adam Peterson deemed the people's September 1, 2021 CoC to be valid." Def.'s Mot. ¶ 6. But now, Defendant, like the defendant in *Solomon*, asks Your Honor to review that decision—one by a judge of equal rank. The issue at hand involves potentially dismissing the charges against Defendant, which does not constitute a routine matter. Exercising jurisdiction would equate reviewing and amending bail determinations with potential dismissals of charges, and thus, the Court should decline to do so.

Yet Defendant's motion fails to advance any reason why this court should exercise its jurisdiction over this motion. It lacks any suggestion that Judge Peterson cannot hear this motion.

Such exercise would effectively encourage litigants' attempts to undermine the authority of equal members of the same court. Indeed, exercising jurisdiction over this motion would risk creating conflicting law within the same case as Judge Peterson has already validated the People's certificate of compliance. Like the court did in *Solomon*, the Court should decline to exercise its jurisdiction over Defendant's motion.

B. IF THE COURT EXERCISES JURISDICTION OVER DEFENDANT'S MOTION, IT SHOULD DENY THE REQUESTED RELIEF BECAUSE DEFENDANT FAILED TO FOLLOW CPLR 2221(d)'S REQUIREMENTS.

Aside from its jurisdictional defect, Defendant's motion suffers from a litany of flaws. At the outset, he filed the motion 54 days after the deadline to do so had passed. *See* CPLR 2221(d)(3). Further, his failure to specify that he seeks reargument dooms his position. *See* CPLR 2221(d)(1). Finally, this motion recycles the discarded bases for invalidating the People's initial certificate of compliance. *See* CPLR 2221(d)(2); *see also DeSoignies v. Cornasesk House Tenants' Corp.*, 800 N.Y.S.2d 679, 682 (1st Dep't 2005) (denying reargument where a movant sought only to urge a new theory of liability not previously advanced and failed to show how the court misconstrued facts or law). Each flaw is fatal to Defendant's motion, and thus, its denial matches New York's policy of limiting parties to "one bite at the apple." *See Amato v. Lord & Taylor, Inc.*, 781 N.Y.S.2d 125, 126 (2d Dep't 2004) (denying leave to reargue because the procedure is not designed to give successive opportunities to present arguments different from those originally presented).

- i. Defendant's motion is untimely because he filed it 54 days after the deadline to do so passed.

Defendant failed to seek leave to reargue within 30 days of the court's entry of its order denying the first motion to invalidate the People's certificate of compliance. *See* CPLR 2221(d)(3); *see also Merly*, 51 Misc. 3d at 860 ("[T]he time limitation contained in CPLR

2221(d)(3), when dealing with a final decision in a criminal matter should commence from the date it is rendered to the parties.”). Thus, the Court should deny Defendant’s motion on this basis.

A movant’s failure to file a motion under CPLR 2221 within the 30-day deadline justifies its denial. *See Trump v. Cheng*, No. 602877-05, 2009 WL 76146, at *6 (Sup. Ct. N.Y. Cnty. Jan. 6, 2009); *Trans. Workers Union of Am. Local 100 AFL-CIO v. Schwartz*, No. 0600268-03, 2005 WL 6066410, at *4 (Sup. Ct. N.Y. Cnty. Aug. 31, 2005) (denying leave to reargue when the movant requested such relief 16 days after the statutory deadline). In *Cheng*, the parties disputed the sale price of, and use of proceeds from, parcels of land they developed. 2009 WL 76146, at *2. Upon the defendant’s motion, the trial court dismissed all but one of the plaintiff’s claims. *Id.* The court entered the corresponding order which started the plaintiff’s 30-day clock to seek leave to reargue. *Id.* at *4. The plaintiff, however, moved for leave to reargue on September 5, 2006—six days after the statutory 30-day deadline. *Id.* In turn, the trial court determined that the motion was untimely, and the plaintiff failed to identify any circumstances to justify an extension of time. *Id.* at *6.

So too here. Defendant’s 30-day clock to seek leave to reargue began when the court validated the People’s certificate of compliance on October 25, 2021. Given that the court’s decision was communicated to the parties at that time, the 30-day clock expired on November 24, 2021. Defendant filed this motion 54 days later, on January 17, 2022, which exceeds the six-day and 16-day time periods in other cases in which courts have denied motions for leave to reargue. Defendant, like the movant in *Cheng*, also fails to set forth any reason why the Court should forgive his untimely motion. Thus, the Court should deny this motion on this basis.

- ii. Defendant’s motion is not properly identified as a motion for leave to reargue.

Defendant's failure to specify that he seeks leave to reargue under CPLR 2221(d)(1) justifies the Court denying his motion. *See* CPLR 2221(d)(1) (a motion for leave to reargue "shall be identified specifically as such"). The legislature mandated such specification. *See id.* Defendant's noncompliance with this mandate defeats his motion.

A movant's failure to properly label the motion as seeking leave to reargue warrants denial. *See Merly*, 51 Misc. 3d at 860. In *Merly*, the defendant unilaterally reargued a previously decided issue. *Id.* In so moving, the defendant did not specify that he sought leave to reargue, "leaving [the] court to simply guess." *Id.* Ultimately, the court determined that this failure "alone warrants summary denial." *Id.* at 860–61.

Here, Defendant asks the Court to guess like the defendant asked the court to do in *Merly*. Defendant labeled this motion as a "Motion to Dismiss Pursuant to C.P.L. §§ 30.30 & 210.20(1)(G), and Challenging COC Under C.P.L. § 245.50(4)." Neither "leave" nor "reargue," or any of their forms, appear in the motion's title or text. Instead, Defendant seeks to challenge the People's certificate of compliance and asks the Court to dismiss the charges. That relief exceeds the leave to reargue contemplated by CPLR 2221(d). Like the defendant in *Merly*, Defendant disobeyed the legislature's requirement in CPLR 2221(d)(1). And Defendant does not explain how allowing him to bypass a legislative mandate serves the "interests of justice." No words or phrases appealing to those interests appear in Defendant's motion. On that basis, the Court should deny Defendant's motion.

- iii. Defendant's efforts to invalidate the People's certificate of compliance failed in the first instance, and he is not entitled to another opportunity to do so.

Defendant has no entitlement to another "bite at the apple," either to justify his original position or to add new arguments. *See Amato*, 781 N.Y.S.2d at 126 (denying leave to reargue because the procedure is not designed to give successive opportunities to present arguments

different from those originally presented). But a second “bite at the apple” is what Defendant seeks, as this motion restates the rejected bases.

Courts do not allow litigants to use motions for leave to reargue as vehicles to argue “the very questions previously decided.” *Merly*, 51 Misc. 3d at 862 (cleaned up). In *Merly*, the defendant was indicted for felony driving while intoxicated. *Id.* at 859. In the resulting prosecution, he moved to suppress physical and testimonial evidence obtained during the search and seizure of him. *Id.* The trial court denied his motion. *Id.* Yet he moved again to suppress that evidence. *Id.* Upon concluding that the defendant’s second motion argued the same issues decided in his first motion, the court denied the requested relief. *Id.* at 862. And the defendant failed to explain how, if at all, the court overlooked or misapprehended a law or fact. *Id.*

Here, Defendant improperly attempts to relitigate his earlier challenge to the People’s certificate of compliance. During the parties’ court appearance on October 25, 2021, Judge Peterson rejected Defendant’s argument that the absence of the Motor Collision Worksheet and photographs of the vehicles involved in the collision invalidated the People’s certificate of compliance. And Defendant acknowledges that ruling in this motion. *See* Def.’s Mot. ¶ 6 (“On October 25, 2021, during an appearance in Part DWI, Judge Adam Peterson deemed the people’s September 1, 2021 CoC to be valid.”). The then-disputed items constitute the same items that Defendant again argues render the People’s initial certificate of compliance invalid. Because the court has already decided this exact issue, Defendant’s unilateral reargument mirrors the second motion in *Merly*. Likewise, this motion presents no law or fact that the court overlooked or misapprehended, which warrants its denial.

At the same time, the Court should not accept Defendant’s reliance on the same facts and law supporting his position that he may now move to invalidate the People’s initial certificate of

compliance. The court received notice of the absence of the Motor Collision Worksheet and the six photographs from the People's production of discoverable materials when the parties filed their Joint Letter on October 24, 2021. And the court received additional notice of their absence when Defendant argued his initial motion in open court the next day. Defendant cites no new basis for the proposition that failure to include such items warrants invalidating the People's certificate of compliance and dismissing the charges. So, Defendant failed to meet his burden to show that the court overlooked or misapprehended a law or fact, which represents another independent basis to deny this motion.

CONCLUSION

In essence, Defendant argues that he is entitled to the requested relief because he did not receive the outcome he first desired. Not so. Such a ruling would grind the judicial system to a halt. This motion fails to satisfy CPLR 2221's requirements, and thus, the Court should deny the requested relief.

Respectfully submitted,

Assistant District Attorney

Dated: February 10, 2022
Brooklyn, New York

Applicant Details

First Name **Jenny**
 Last Name **Xia**
 Citizenship Status **U. S. Citizen**
 Email Address jennyxia@pennlaw.upenn.edu
 Address

Address**Street****27-17 42nd Road, Apt 3C****City****Long Island City****State/Territory****New York****Zip****11101****Country****United States**

Contact Phone Number **9087203062**

Applicant Education

BA/BS From **University of Pennsylvania**
 Date of BA/BS **May 2014**
 JD/LLB From **University of Pennsylvania Law School**
<https://www.law.upenn.edu/careers/>
 Date of JD/LLB **May 15, 2019**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Journal of Law and Social Change**
 Moot Court Experience **No**

Bar Admission

Admission(s) **New York**

Prior Judicial Experience

Judicial Internships/
 Externships **Yes**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Professional Organization

Organizations **Just The Beginning Organization**

Recommenders

Mayeri, Serena
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Lee, Sophia
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References

Professor Eleanor Barrett
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Professor Sophia Z. Lee
Email: slee@law.upenn.edu
Phone: 215.573.7790

Professor Serena Mayeri
Email: smayeri@law.upenn.edu
Phone: 215.898.6728

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Jenny Xia
27-17 42nd Road, APT 3C
Long Island City, NY 11101
(908) 720-3062

April 11, 2021

The Honorable Elizabeth W. Hanes
United States District Court
Eastern District of Virginia
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Magistrate Judge Hanes:

I am writing to request your consideration of my application for a clerkship starting in summer 2022. I am an Associate at Shearman & Sterling LLP who is eager to begin a career as a litigator.

I have worked to develop strong skills in legal research, analysis, and writing throughout my legal training. As a judicial intern to the Honorable Ketanji Brown Jackson at the D.C. District Court, I strengthened my legal research skills by preparing a draft bench memorandum for a case concerning the Freedom of Information Act. Coursework in appellate advocacy and pro bono work through Penn's Employment Advocacy Project have taught me how to write effectively. At Shearman & Sterling LLP, I have prepared memoranda for civil cases and managed all aspects of a bond transaction. I intend to further develop legal research and writing skills through my pro bono work as an Associate.

I enclose my resume, transcript, and writing sample. Letters of recommendation from Professor Eleanor Barrett (eroy@law.upenn.edu, 215.898.2043), Professor Sophia Z. Lee (slee@law.upenn.edu, 215.573.7790), and Professor Serena Mayeri (smayeri@law.upenn.edu, 215.898.6728) are enclosed. Please let me know if any other information would be useful.

Respectfully,

Jenny Xia

Encls.

Jenny Xia

27-17 42nd Road, APT 3C, Long Island City NY 11101
(908) 720-3062; jennyxia@pennlaw.upenn.edu

EDUCATION

University of Pennsylvania Law School, J.D., May 2019

Honors: Executive Editor, *Journal of Law and Social Change*
Activities: Employment Advocacy Project
Asian Pacific American Law Student Association

University of Pennsylvania, B.A., *magna cum laude* in Sociology, May 2014

Honors Thesis: *Gender and the Negotiation of Housework by Socioeconomic Class*

EXPERIENCE

Shearman & Sterling LLP, New York City, NY

Associate, Capital Markets Group

October 2019 – Present

Review SEC filings for compliance with securities laws. Draft offering documents, legal opinions and due diligence request lists. Oversee all aspects of deal launch and closing processes. Prepare Green Card applications on behalf of domestic violence victims.

Summer Associate, Litigation and Financial Institutions Advisory & Regulatory Groups

Summer 2018

Drafted brief arguing for dismissal of plaintiff's conspiracy claim under New York's Donnelly Act. Researched federal court treatment of antitrust claims at summary judgment. Assisted in drafting chapter concerning the Investment Advisers Act for Practicing Law Institute treatise.

U.S. District Court, District of Columbia, Washington, DC

Summer 2017

Judicial Intern to the Honorable Ketanji Brown Jackson

Prepared draft bench memorandum analyzing whether government agency's decision-making documents are exempt from disclosure under the Freedom of Information Act. Researched and briefed law clerks on Title VII and ERISA cases.

Employment Advocacy Project, Philadelphia, PA

September 2016 – May 2018

Advocate

Provided legal representation to low-income workers denied unemployment compensation. Drafted appeal letter to Unemployment Compensation Board of Review to obtain unemployment compensation on client's behalf. Counseled and represented three clients at referee hearings.

Institute for Women's Policy Research, Washington, DC

September 2014 – July 2016

Data Analyst, Research Assistant, Mariam K. Chamberlain Fellow

Drafted, edited, and fact-checked research reports concerning employment policies' impact on low-income and minority workers. Analyzed and summarized data for publication. Fielded news media interviews, and facilitated internal meetings.

LANGUAGES/INTERESTS

Highly proficient in Mandarin, knowledge of basic French. Enjoy tennis, science fiction, live music.

Jenny Xia
University of Pennsylvania Law School

Fall 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Civil Procedure	Amy Wax	B+	4	
Legal Practice Skills	Eleanor Barrett	N/A	4	
Torts	Jonathan Klick	B	4	
Contracts	Jean Galbraith	B-	4	

Spring 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Constitutional Law	Seth Kreimer	A-	4	
Land Use Law	Wendell Pritchett	A	3	
Criminal Law	David Rudovsky	B	4	
International Law	William Burke-White	A	3	
Legal Practice Skills	Eleanor Barrett	N/A	2	

Fall 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Employment Discrimination	Serena Mayeri	A-	3	
Corporations	David Skeel	B	4	
Independent Study (JLASC)	Seth Kreimer	N/A	2	
Appellate Advocacy	Robert Palumbos	B+	3	
Journal of Law and Social Change	Seth Kreimer	N/A	1	
Employee Benefits	Steven Spencer, Robert Lichtenstein	B	2	

Spring 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Refugee Law	Fernando Chang-Muy	A	3	
International Arbitration	Adam Raviv, Stratos Pahi	A	3	
Professional Responsibility	Sozi Pedro Tulante	A-	2	
Federal Income Tax	Christopher Sanchirico	B+	3	
Business Management	Rahul Kapoor	N/A	3	

Fall 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Securities Regulation	Jill Fisch	B	4	
Cultural Heritage & the Law	Sharon Lorenzo	A-	3	

Contract Drafting	Aaron Polak	A-	3
Journal of Law and Social Change	Seth Kreimer	N/A	1
Evidence	Shanin Specter	B	4

Spring 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Black Lives Matter in Historical Perspective	Sophia Z. Lee	A-	3	
Journal of Law and Social Change	Seth Kreimer	N/A	2	
Property	Sarah Barringer Gordon	B+	3	
Trusts and Estates	Christina Fournaris	B+	2	

UNIVERSITY OF PENNSYLVANIA LAW SCHOOL

April 11, 2021

The Honorable Elizabeth Hanes
Spottwood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Re: Clerkship Applicant Jenny Xia

Dear Judge Hanes:

It is with enthusiasm that I write to recommend Jenny Xia for a clerkship in your chambers. Jenny's intellect, dedication, and work ethic promise to make her an excellent law clerk.

I came to know Jenny when she enrolled in my Employment Discrimination course in the Fall of 2017. Jenny was always well-prepared when called upon, and her contributions to class discussion reflected an intuitive understanding of workplace realities as well as an impressive grasp of the law. Grades in my course are based almost entirely upon an anonymously graded, two-part, 24-hour takeaway examination. The first part of the exam is an intricate fact pattern that requires students to identify and analyze legal claims, and to draft compliance recommendations to a hypothetical employer. The second is a more open-ended essay question that invites students to make descriptive and normative judgments about the field of employment discrimination law.

Jenny's performance on both parts of the exam was strong. Her answers demonstrated not only a solid command of the relevant law, but an ability to apply the law to a complicated set of facts. Her essays were clearly written and well-structured, and reflected her knowledge of both the forest (organizing concepts of anti-discrimination theory and policy) and the trees (the sometimes technical doctrines of employment law). She earned a solid A-minus on the exam and in the course.

Jenny came to Penn Law after graduating magna cum laude from the University of Pennsylvania. She was inspired to pursue a legal career by her grandmother's struggles as a factory worker in China and the devastating consequences of a lack of workplace regulations or access to legal services. As a research assistant at the Institute for Women's Policy Research after college, Jenny researched and wrote about the effects of workplace policies on the well-being of low-income workers, and successfully advocated for municipal sick leave policies. She also staffed the IWPR's phone line, and witnessed firsthand how crucial access to legal representation could be for individuals struggling with employment and family-related challenges.

In law school, Jenny continued to pursue her interest in serving low-income and indigent clients. With the Employment Advocacy Project, Jenny assisted workers in obtaining unemployment compensation, performing client intake, counseling clients about their legal strategy, representing them in Referee Hearings, and, when necessary, filing appellate briefs on their behalf. She served as a judicial intern for the Honorable Ketanji Brown Jackson on the Federal District Court for the District of Columbia, where among other tasks Jenny assisted the judge's law clerks in drafting a bench memo for a case related to the Freedom of Information Act. Her experience as a judicial intern confirmed Jenny's strong interest in a clerkship and her conviction that courts can play a crucial role in affording ordinary people access to justice.

Jenny also gained valuable research, writing, and litigation experience as a summer associate at Shearman and Sterling. At the firm she worked on antitrust and other litigation, and assisted with research and drafting a chapter in a securities regulation handbook for the Practising Law Institute. Jenny plans to return to Shearman and Sterling after graduation to develop her litigation skills; in the long run, she intends to use those skills in the service of representing low-income individuals and communities through work in public interest law and in government.

In sum, I have no doubt that Jenny will launch a distinguished career in public service and that she will be an asset to the chambers of any judge fortunate enough to hire her. Jenny's kind, professional demeanor should make working with her a pleasure. In short, Jenny Xia's application for a clerkship in your chambers has my enthusiastic endorsement.

Thank you very much for your consideration. If I can provide any additional information or assistance, please do not hesitate to contact me.

Sincerely,

Serena Mayeri

Serena Mayeri - smayeri@law.upenn.edu - 215-898-6728

Professor of Law and History
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E-mail: smayeri@law.upenn.edu

Serena Mayeri - smayeri@law.upenn.edu - 215-898-6728

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

April 11, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Re: Clerkship Applicant Jenny Xia

Dear Judge Hanes:

I write to recommend Jenny Xia for a clerkship in your chambers. Jenny was a student in my year-long, first-year Legal Practice Skills course during the 2016-17 academic year.

Jenny came to law school with solid analytical and writing fundamentals. Jenny's first written assignment, an objective legal memo about a copyright law issue, demonstrated excellent case-reading skills. Her analyses were always well organized and direct, and she worked hard to incorporate lessons from class and integrate feedback into her work over the course of the year. I have been please to watch Jenny continue to develop her research and writing skills through coursework like Appellate Advocacy, her summer internships, and her pro bono work with the Penn Law Employment Advocacy Project.

In addition to her academic qualifications, Jenny has many intangible qualities that will make her a great clerk. She is diligent, responsible, hardworking, mature, and levelheaded. I found her to be a pleasure to work with and to have in class.

For all of these reasons, Jenny is a strong clerkship candidate. Thank you in advance for considering this letter, and please do not hesitate to contact me if I can provide any further information.

Sincerely,

Eleanor Barrett
Denise A. Rotko Associate Dean for Legal Practice Skills
Tel.: 215.898.2043
Email: eleanor_barrett@law.upenn.edu

Eleanor Barrett - eleanor_barrett@law.upenn.edu

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

April 11, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Re: Clerkship Applicant Jenny Xia

Dear Judge Hanes:

Jenny Xia is a talented writer and a subtle thinker. Earnest and steadfast she will devote herself to a clerkship. An immigrant for whom the American legal system has long emblemized the virtues of her family's new home, she will bring a distinct commitment to the work of the court. I recommend her to you for a clerkship with great enthusiasm.

Jenny is a strong writer, an observant reader, and a careful thinker who will be prepared for the writing demands of a clerkship. I taught Jenny in a demanding seminar that combined the history of race and the law with exposure to lawyers engaged in racial justice advocacy today. I ask a lot of students, assigning hundreds of pages of reading each week, requiring them to write discussion questions as well as several argumentative essays that involve outside research, and expecting engaged participation in class. Jenny proved herself to be an excellent writer. My comments on her paper noted that her "writing is clear, clean, and crisp" with "well supported topic sentences and well-focused paragraphs." She also proved a careful and insightful reader of the books I assigned who always found apt, illuminating outside sources with which to put them in conversation. One paper changed how I understood the history about which she wrote as well as the texts she analyzed. I praised that paper for being "incredibly insightful and lucidly written," providing "a trenchant critique of the readings." Jenny also responds well to feedback. Her first paper was not the kind of analytic, argumentative essay I was looking for. She fully absorbed my comments to that effect and turned in a high A paper the next time around.

Jenny will bring the training of a litigation associate at a top firm to a clerkship. This fall, Jenny will join Shearman & Sterling, LLP in New York as a litigation associate. As a result, she will enter a clerkship with the training and seasoning of firm practice.

For Jenny, a clerkship is a way to fulfill her commitment to public service and the legal system she reveres. Jenny has a longstanding commitment to public service, born of her lifelong appreciation for the United States' legal system. Jenny immigrated from China at age 3 so her father could attend graduate school. She did not know any lawyers growing up, but she remembers first recognizing the value of the American legal system as a child listening to her grandmother's stories of factory work in China. She was aware that workers in this country have legal protections and recourse that her grandmother did not, and that those legal protections could have greatly mitigated the harshness of her grandmother's experience. That awareness is reflected in the work Jenny did after college as a policy analyst who specialized in paid sick leave policies and in her pro bono work during law school helping workers secure unemployment benefits. It is also why she found it so powerful to observe, as a judicial intern in federal district court, a pro se litigant argue a FOIA claim and found it so inspiring in my seminar to hear Department of Justice lawyers talk about the critical role clerking played in their own career-long commitments to public service.

Jenny is also lovely. She is quiet but not shy. Indeed, while she does not seek attention, she has the independence and gumption to have been elected to student government and have co-founded a campus bike share program during college. Jenny is positive, eager to learn and grow, thoughtful, and committed to incorporating public service into her career. She will be a pleasure to mentor and work with. Given her strong writing and incisive mind, she will also be an able clerk. I recommend her to you with great enthusiasm.

Sincerely,

Sophia Z. Lee
Professor of Law
Tel.: (215) 573-7790
E-mail: slee@law.upenn.edu

Sophia Lee - slee@law.upenn.edu - 215-573-7790

WRITING SAMPLE

Jenny Xia
27-17 42nd Road, APT 3C
Long Island City, NY 11101
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The attached writing sample is an excerpt from a brief submitted for an Appellate Advocacy class. The case concerned a challenge to the trial court's discretion to resubmit a jury verdict and enter judgment upon a resubmitted verdict. The issues appealed in the case were:

1. Does Rule 49 of the Federal Rules of Civil Procedure permit a trial court to resubmit a verdict that finds defendant not liable on the determinant legal issue but assigns damages to plaintiff?
2. Does a trial court abuse its discretion where it enters judgment upon a second verdict that (a) differs from the original verdict in terms of liability and quantum of damages and (b) is possibly influenced by the trial court's post-verdict instructions?

I represented the appellant, Wright Medical Technology Inc. I chose the section of the brief addressing the trial court's abuse of discretion as my writing sample.

Xia 1